

2686
No. 12826

United States
Court of Appeals
for the Ninth Circuit.

LAWRENCE BARKER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Southern District of California
Central Division.

FILED

MAY 17 1951

PAUL M. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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District Court of the United States for the Southern District of California, Central Division
Civil Action No. 9621-BH

LAWRENCE BARKER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR REFUND OF FEDERAL
INCOME AND VICTORY TAXES

Comes Now the Plaintiff, and for his cause of action against the defendant alleges and states, as follows:

1. This is an action for the refund of Federal Income and Victory Taxes paid by Plaintiff in the amount of \$1,818.98. This action arises under Section 111 of the Internal Revenue Code and also Section 24(20) of the Judicial Code, as amended.

2. Plaintiff has been at all times mentioned herein, and now is, a resident of the City of Los Angeles, County of Los Angeles, State of California.

3. On September 30, 1943, Plaintiff transferred to Lawrence Barker, Inc., a California corporation, and said Lawrence Barker, Inc., received from Plaintiff, thirty (30) shares of the capital stock of said Lawrence Barker, Inc. Said Lawrence Barker, Inc., paid to plaintiff the sum of \$5,000.00 for the transfer of said thirty (30) shares of stock.

Payment of said sum of \$5,000.00 was made by Lawrence Barker, Inc., to Plaintiff by way of crediting \$5,000.00 against Plaintiff's indebtedness to Lawrence Barker, Inc. [2*]

4. The thirty (30) shares of capital stock of Lawrence Barker, Inc., so transferred, as hereinbefore alleged in paragraph 3 hereof, were acquired by Plaintiff on or about the 28th day of December, 1923. As consideration for the original issuance to him of said thirty (30) shares of the capital stock of Lawrence Barker, Inc., Plaintiff paid a price of \$6,580.50. Said price of \$6,580.50 was paid by Plaintiff in the form of property consisting of common stock of Barker Brothers, Inc., a California corporation. On or about the 28th day of December, 1923, the common stock of Barker Brothers, Inc., transferred by Plaintiff in exchange for the aforementioned thirty (30) shares of the capital stock of Lawrence Barker, Inc., had a fair market value of \$6,580.50. The aforementioned thirty (30) shares of the capital stock of Lawrence Barker, Inc., cost the Plaintiff \$6,580.50, or \$219.35 per share.

5. The facts and circumstances under which Plaintiff acquired the aforesaid thirty (30) shares of Lawrence Barker, Inc., stock are fully set forth in the claim for refund of Federal Income and Victory Taxes which Plaintiff executed and duly filed with the Collector of Internal Revenue of the United States for the Sixth District of California, at Los Angeles, California, on March 15, 1947. A true

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

copy of said claim for refund is attached hereto, marked Exhibit "I," and incorporated herein by reference as if fully set forth herein. Said thirty (30) shares of Lawrence Barker, Inc., stock are a part of the twenty thousand (20,000) shares of Lawrence Barker, Inc., stock received by the Lawrence Barker Interests, including Plaintiff, in exchange for their common stock in "California," all as set forth in the aforesaid claim for refund previously referred to herein.

6. Under the provisions of Sections 113(a) and 113(b) of the Internal Revenue Code, Plaintiff's unadjusted basis and adjusted basis for determining gain or loss from the disposition of said thirty (30) shares of the capital stock of Lawrence Barker, Inc., as hereinbefore alleged in paragraph 3 hereof, was the cost of said shares to Plaintiff, to wit: the amount of \$6,580.50, or \$219.35 per share. Said basis for determining gain or loss from the disposition of said thirty (30) shares of the capital stock of Lawrence Barker, inc., was in excess of the amount realized by Plaintiff from the disposition of said [3] thirty (30) shares of capital stock of Lawrence Barker, Inc. Plaintiff realized a loss from said disposition of the thirty (30) shares of the capital stock of Lawrence Barker, Inc. Said loss of Plaintiff was the amount of \$1,580.50.

7. Plaintiff has filed his Federal Income Tax Returns for all years on the basis of the calendar year. Plaintiff filed his Federal Income Tax Return for the calendar year 1943 on March 15, 1944, with the Collector of Internal Revenue of the

United States for the Sixth District of California, at Los Angeles, California. Plaintiff included in said tax return as income from capital gain, the entire amount received by him from the aforesaid disposition of the thirty (30) shares of the capital stock of Lawrence Barker, Inc., to wit: the amount of \$5,000.00. Said tax return of the Plaintiff for the calendar year 1943 disclosed a liability for Federal Income and Victory Taxes in the sum of \$34,454.97. Plaintiff paid said sum of \$34,454.97 to the Collector of Internal Revenue of the United States for the Sixth District of California, at Los Angeles, California. Plaintiff paid said sum of \$34,454.97 in the manner, amounts, and at the times following, to wit: on March 15, 1943, \$794.41; on September 15, 1943, \$170.17; on December 15, 1943, \$6,951.59; on March 15, 1944, \$25,890.20; withheld by Plaintiff's employer during 1943, \$648.60. Said tax return of the Plaintiff for the calendar year 1943 was erroneous. The inclusion by Plaintiff in said tax return, as income from capital gain, of the amount realized from the disposition of the thirty (30) shares of the capital stock of Lawrence Barker, Inc., received by Plaintiff, to wit: the sum of \$5,000.00, or the inclusion of any other sum as income from the disposition by Plaintiff of said thirty (30) shares of capital stock of Lawrence Barker, Inc., was erroneous. Plaintiff realized a loss of \$1,580.50 upon the disposition of said thirty (30) shares of the capital stock of Lawrence Barker, Inc. Said loss of \$1,580.50 is not included in the said tax return of Plaintiff for the calendar year

1943. Said loss of \$1,580.50 should properly be included in determining Plaintiff's liability for Federal Income and Victory Taxes for the calendar year 1943. In determining Plaintiff's liability for Federal Income and Victory Taxes for the calendar year 1943, the inclusion of the said loss [4] of \$1,580.50, and the exclusion of the said gain of \$5,000.00 erroneously reported by Plaintiff on his tax return for the calendar year 1943, as income from capital gain upon the disposition of the thirty (30) shares of the capital stock of Lawrence Barker, Inc., result in a liability of Plaintiff for Federal Income and Victory Taxes for the calendar year 1943, in the sum of \$32,635.99. Said sum of \$32,635.99 is the correct amount of Plaintiff's liability for Federal Income and Victory Taxes for the calendar year 1943. Plaintiff has overpaid his taxes for said year in the amount of \$1,818.98.

8. As referred to in paragraph 5 hereof, pursuant to the provisions of Section 322 of the Internal Revenue Code, Plaintiff duly executed and filed with the Collector of Internal Revenue of the United States for the Sixth District of California, at Los Angeles, California, on March 15, 1947, a claim for refund of Federal Income and Victory Taxes for the calendar year 1943. The amount of Income and Victory Taxes so claimed for refund was \$1,818.98. Under date of July 27, 1948, Plaintiff was advised by a written notice sent by registered mail by the Commissioner of Internal Revenue, pursuant to Section 3772(a)(2) of the Internal Revenue Code, that said claim for refund had been disallowed in

full. A copy of said letter of notice of disallowance is attached hereto, marked Exhibit "II" and incorporated herein by reference as if fully set forth herein. No further action has been taken with respect to said claim since, and no part of Plaintiff's overpayment of 1943 taxes in the amount of \$1,818.98 has been refunded or credited to Plaintiff.

9. By reason of the premises, Plaintiff is entitled to a refund of Federal Income and Victory Taxes for the calendar year 1943, in the amount of \$1,818.98, together with interest thereon, as provided by law, or such greater amount as is legally refundable.

Wherefore, Plaintiff prays judgment against the defendant for the sum of \$1,818.98, together with interest thereon, as provided by law, or such greater amount as is legally refundable, and for his costs of suit, and for such other and further relief as this Honorable Court shall deem proper.

Dated: April 22, 1949.

/s/ ARTHUR MANELLA, of
BERGER & IRELL,

Attorneys for Plaintiff. [5]

State of California,
County of Los Angeles—ss.

Lawrence Barker, being by me first duly sworn, deposes and says: That he is the Plaintiff in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon informa-

tion and belief, and as to those matters he believes it to be true.

/s/ LAWRENCE BARKER.

Subscribed and sworn to before me this 22nd day of April, 1949.

[Seal] /s/ CLINTON F. SECCOMBE,
Notary Public in and for the County of Los Angeles, State of California. [6]

Exhibit "I"

Lawrence Barker
Claim

To be Filed with the Collector Where Assessment was Made or Tax Paid.

The Collector will indicate the block below the kind of claim filed, and fill in the certificate on the reverse side.

- ☐ Refund of Tax Illegally Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

Collector's Stamp
(Date Received.)

State of California,
County of Los Angeles—ss.

Name of taxpayer or purchaser of stamps: Lawrence Barker.

Business address: 302 Quinby Building, Los Angeles, California.

Residence

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Los Angeles, California.
2. Period (if for income tax, make separate form for each taxable year) from January 1, 1943, to December 31, 1943.
3. Character of assessment or tax: Income Tax.
4. Amount of assessment, \$34,454.97; dates of payment 3/15/43; 6/15/43; 9/15/43; 12/15/43; 3/15/44.
5. Date stamps were purchased from the Government:
6. Amount to be refunded: \$1,818.98.
7. Amount to be abated (not applicable to income or estate taxes): [7]
8. The time within which this claim may be legally filed expires, under Section 322(b) of the IRC on March 15, 1947.

The deponent verily believes that this claim should be allowed for the following reasons:

(See Statement Attached.)

/s/ LAWRENCE BARKER.

Sworn to and subscribed before me this 20th day of September, 1946.

[Seal]

ARTHUR MANELLA,

(Signature of officer administering oath.)

Notary Public

(Title) [8]

Lawrence Barker

Refund Claim

1943 Income Tax

Statement

The taxpayer reported on his 1943 return a capital gain of \$5,000.00, the entire proceeds realized from liquidation of a portion of taxpayer's holding of capital stock of Lawrence Barker, Inc., to wit, 30 shares thereof. The basis for gain or loss from the disposition of said shares has been ascertained to be \$219.35 per share, and in accordance with the provisions of I.R.C., Sections 115(c) and 111, no gain, but a loss was realized from this transaction. Although payment for the said 30 shares of Lawrence Barker, Inc., stock was made to the taxpayer by way of crediting the amount of \$5,000.00 against taxpayer's indebtedness to Lawrence Barker, Inc., the said payment, a liquidation distribution, was not the equivalent of a taxable dividend, and in fact the corporation had no "earnings and profits" out of which a dividend could have been distributed at the time of said payment.

In 1923 Barker Bros., Inc., a California corporation, hereinafter called "California," was engaged in the business of selling furniture and house furnishings in Los Angeles, California. Its outstanding capital stock consisted of preferred stock of a total par value of \$575,000.00, and 17,894.35 shares of common stock, having a total par value of \$1,789,435.00. Of the 17,894.35 shares of California common stock, 8,179.69 shares were owned by Lawrence Barker, as Executor of the Estate of W. A. Barker, deceased, Lawrence Barker, individually (claimant herein), Lawrence Barker, Trustee, Mrs. W. A. (Pauline) Barker, and F. K. Colby, Trustee, which group of persons is hereinafter referred to as the Lawrence Barker Interests. The total basis for gain or loss of these 8,179.69 shares to the Lawrence Barker Interests was \$1,326,081.86, or an average basis of \$162.1188 per share. The remaining common shares of California were owned by a group of persons hereinafter referred to as the C. H. Barker Interests, and by certain employees of "California." [9]

In the latter part of 1923, the Lawrence Barker Interests decided to withdraw from participation in the business. On December 20, 1923, the Lawrence Barker Interests entered into an agreement with the C. H. Barker Interests, under the terms of which agreement the parties agreed to effect a reorganization of "California," as follows: A new corporation, Barker Bros., Inc., a Delaware corporation, hereinafter called "Delaware," was to be

formed. "Delaware" would acquire all of the common stock of "California" and would eventually dissolve "California," and so obtain all of the assets and business. The C. H. Barker Interests would ultimately receive 100,000 shares of no par common stock of "Delaware." At the same time another corporation was to be formed, called Lawrence Barker, Inc., all of whose authorized stock was to be received by the Lawrence Barker Interests. L. B. Inc. was ultimately to receive \$1,000,040.00 cash (from the sale at 92 of \$1,087,000.00 First Preferred Stock of "Delaware"), \$1,000,000.00 First Preferred Stock of "Delaware," and \$2,300,000.00 of Second Preferred Stock of "Delaware," issued by "Delaware" to it.

Also on December 20, 1923, the Lawrence Barker Interests and the C. H. Barker Interests entered into an agreement with Marshall Field, Glore, Ward & Co., investment bankers, hereinafter referred to as "Bankers." By the terms of this agreement, the previously mentioned agreement between the Lawrence Barker Interests and the C. H. Barker Interests was affirmed, and "Bankers" agreed to supply the necessary cash for the transaction through the purchase of \$1,087,000.00 First Preferred Stock of "Delaware." As one of the considerations, "Bankers" demanded, and received, an option to purchase for cash at 92 the additional \$1,000,000 par value First Preferred Stock of "Delaware" to be issued to L. B. Inc.

Both of the above-mentioned agreements were carried out. "Delaware" and L. B. Inc. were formed. On December 28, 1923, the "California"

common shareholders surrendered all their shares to "Delaware." "Delaware," in turn, issued its temporary \$100.00 par value common stock, 43,870 shares directly to L. B. Inc., and 51,825 shares to the other "California" common shareholders (not including the Lawrence Barker Interests). The same day, L. B. Inc. issued all of its shares to the Lawrence Barker Interests.

The next day, December 29, 1923, L. B. Inc. returned to "Delaware" the [10] 43,870 shares of temporary \$100.00 par value common stock of "Delaware" in exchange for 20,870 shares of First Preferred Stock, and 23,000 shares of Second Preferred Stock of "Delaware." Immediately after this exchange, L. B. Inc. sold 10,870 shares of the First Preferred Stock of "Delaware" to Lawrence Barker personally for \$1,000,040.00. Lawrence Barker, in turn, sold that stock for the same amount to "Bankers." The only cash involved in this transaction came from "Bankers" and was paid over to L. B. Inc.

Also on December 29, 1923, certain employee interests of "California" turned into "Delaware" 935 shares of the temporary \$100.00 par value common stock of "Delaware" (which they had received in exchange for their "California" common shares) in exchange for 935 shares of Second Preferred Stock of "Delaware."

After this point, L. B. Inc. and the Lawrence Barker Interests took no further part in the reorganization of "California." "California" and "Delaware" took further steps to carry out the rest of the plan, with the result that on March 1, 1924,

all of the assets and business of "California" were transferred to "Delaware," and the temporary \$100.00 par value common stock of "Delaware," previously owned by the C. H. Barker Interests, had been retired and replaced by a no par issue. The total amount of this no par issue, 100,000 shares, was held by the former common shareholders of "California," exclusive of the Lawrence Barker Interest and the employee interests. "Delaware" also redeemed and retired all of "California's" outstanding preferred stock.

The fair market value of the Delaware preferred shares, both First and Second, at the date of issue was \$100.00 per share. In setting up its capital structure, L. B. Inc. treated the 42,870 shares of First and Second Preferred "Delaware" stock received as having a value of \$4,287,000.00. L. B. Inc.'s capital, consisting of 20,000 shares of stock with \$100.00 par value, was stated to be \$2,000,000.00. The balance of the consideration received by L. B. Inc. for the issue of its capital stock was designated as donated capital surplus. From January 1, 1924, to May 31, 1928, L. B. Inc. sold all of the "Delaware" Preferred shares, except 16,240 shares of Second Preferred. All of the First Preferred Stock of "Delaware" was sold to "Banker" by L. B. Inc. pursuant to the option agreement previously mentioned. For the purposes of calculating its [11] earnings and profits, L. B. Inc. designated as profits only the amounts, if any, received in excess of \$100.00 per share.

On May 20, 1928, the 16,240 shares of "Delaware" Second Preferred were transferred to Bar-

ker Holding Co., a Canadian corporation, in exchange for all of its capital stock. The Barker Holding Co. sold the shares so received, also calculating its profits only on the excess received over the \$100.00 basis. This transaction was subsequently decided to result in a gain for tax purposes to L. B. Inc., based upon the cost of the original shares of "California" (a substituted basis). However, this gain has never been reflected upon the books of the corporation.

The rule that the basis for determining gain or loss from the sale or other disposition of property is the cost of such property, applies in determining the basis of the L. B. Inc. stock in the hands of the Lawrence Barker Interests. Section 204(a) of the Revenue Act of 1924 (IRC, Sec. 113(a)). The cost of the L. B. Inc. stock to the Lawrence Barker Interests is the fair market value at the date of the exchange of the property ("California" stock) exchanged therefor. This fair market value was \$4,387,000.00, or \$219.35 per share for each of the 20,000 shares of L. B. Inc. stock received by the Lawrence Barker Interests. The transaction by which the Lawrence Barker Interests acquired the L. B. Inc. stock did not constitute a tax-free exchange within the provisions of Section 202(c) of the Revenue Act of 1921. The basis of the L. B. Inc. stock in the hands of the Lawrence Barker Interests is not governed by Section 113(a) (6) of the Internal Revenue Code. [12]

Exhibit "II"

Treasury Department
Washington 25

Office of Commissioner of Internal Revenue
July 27, 1948.

Address Reply to
Commissioner of Internal Revenue
and Refer to IT:Cl:CC:Rej

Mr. Lawrence Barker
302 Quinby Building
Los Angeles, Calif.

In re: Claim for refund of \$685.36, \$1,818.98,
\$1,818.98 for the year 1942, 1943, 1943.

Dear Mr. Barker:

In accordance with the provisions of section 3772(a)(2) of the Internal Revenue Code, this notice of disallowance in full of your claim or claims is hereby given by registered mail.

By direction of the Commissioner.

Very truly yours,
E. I. McLARNEY,
Deputy Commissioner.

[Endorsed]: Filed April 27, 1949. [13]

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant and in answer to the plaintiff's Complaint for refund of Federal income and victory taxes herein, admits, denies and alleges as follows:

I.

The allegations of paragraph 1 in the Complaint are admitted.

II.

The allegations of paragraph 2 in the Complaint are admitted.

III.

The defendant denies the allegations of paragraph 3 of the Complaint for the reason that it has not sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof.

IV.

The allegations of paragraph 4 of the Complaint are denied. [14]

V.

Defendant denies the allegations set forth in paragraph 5 of the Complaint for the reason that it has not sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof except that defendant does admit that the plaintiff executed and duly filed with the Collector of Internal Revenue at Los Angeles, California,

a claim for refund on March 15, 1947, and that a true copy of said claim for refund is attached to the Complaint and marked Exhibit "I."

VI.

The allegations of paragraph 6 of the Complaint are denied.

VII.

The allegations to paragraph 7 of the Complaint are denied except that defendant does admit that plaintiff filed income tax returns for all years on the calendar year basis and that the plaintiff's income tax return for the calendar year 1943 was filed on March 15, 1944, with the Collector of Internal Revenue at Los Angeles, California; that said tax return included as income from capital gain the entire amount received by plaintiff from the disposition of thirty shares of the capital stock of Lawrence Barker, Inc.; that said return disclosed a tax liability as alleged in said paragraph 7 and said liability was paid by plaintiff at the times and in the amounts set forth in said paragraph 7.

VIII.

The allegations of paragraph 8 of the Complaint are admitted.

IX.

The allegations of paragraph 9 of the Complaint are denied.

Wherefore, Defendant prays that plaintiff take

nothing by this [15] action, and that defendant have judgment against plaintiff for its costs.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE,
ROBERT D. SCOTT and
JAMES D. PETTUS,
Special Attorney, Bureau of
Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for Defendant,
United States of America.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 26, 1949. [16]

At a stated term, to wit: The September Term, A.D. 1949, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 14th day of November, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Ben Harrison,
District Judge.

[Title of Cause.]

For trial; Arthur Manella, Esq., appearing as counsel for plaintiffs; Eugene Harpole, Att'y, Bureau of Internal Revenue, appearing as counsel for Gov't; Attorney Harpole makes a statement of objections to certain portions of the stipulation of facts filed.

Court orders these causes consolidated on stipulation, and that they be submitted on stipulation of facts filed, and that briefs be filed 30x30x30.

In the District Court of the United States, Southern
District of California, Central Division
Civil Action No. 9621-BH

LAWRENCE BARKER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 9620-BH

MRS. W. A. BARKER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

STIPULATION OF FACTS

It Is Hereby Stipulated and Agreed by and between the parties hereto, through their respective

counsel, that the following facts shall be taken to be true, and may be offered in evidence in these proceedings, together with any exhibits attached hereto, subject to the right of either party to object to any of such facts or exhibits on the grounds of relevancy or materiality, and subject further to the right of either party to introduce such other and additional evidence as is not inconsistent with or contrary to the facts herein stipulated. [19]

I.

Lawrence Barker, one of the plaintiffs herein, and Charles Lawrence Barker, C. Lawrence Barker and C. L. Barker are one and the same person.

Plaintiff Pauline Barker and Mrs. W. A. Barker are one and the same person. Pauline Barker is the mother of Lawrence Barker and the widow of W. A. Barker, who died in 1922.

II.

On October 19, 1923, and up to and including December 28, 1923, Barker Bros. Inc. was a California corporation, hereinafter referred to as Barker California, engaged in the business of selling furniture and house furnishings. Its outstanding capital stock consisted of 5,750 shares of voting preferred stock, having a total par value of \$575,000, and 17,894.35 shares of common stock, having a total par value of \$1,789,435.

III.

On October 19, 1923, and up to and including

December 28, 1923, the common stock of Barker California was owned as follows:

Stockholder	Number of Shares
Charles Lawrence Barker, as Executor of the Estate of W. A. Barker, deceased...	3,418.19
Pauline Barker.....	1,660
Lawrence Barker, individually.....	1,841.50
F. K. Colby, Trustee.....	300
Lawrence Barker, Trustee.....	960
C. H. Barker, C. A. Barker, Erle P. Barker	8,187.69
J. W. Beam, Trustee for certain employees of Barker California.....	1,526.97
<hr/>	
Total	17,894.35

The above named C. H. Barker was the brother of W. A. Barker, deceased. C. H. Barker was also the father of C. A. Barker, also known as Clarence A. Barker, and Erle P. Barker, who are mentioned above.

The above named Charles Lawrence Barker, as Executor of the Estate of W. A. Barker, deceased, Pauline Barker, Lawrence Barker, individually, F. K. Colby, Trustee, and Lawrence Barker, Trustee, owners of common stock of Barker California aggregating 8,179.69 shares, as more particularly set forth, are sometimes hereinafter referred to as the Lawrence Barker interests.

25,000 shares of first preferred stock having a par value of \$100 per share;

25,000 shares of second preferred stock having a par value of \$100 per share; and [22]

100,000 shares of common stock having a par value of \$100 per share.

The first meeting of the Board of Directors of Barker Delaware was held in New York City, N. Y. on December 28, 1923. A copy of said minutes is attached hereto and marked Exhibit "6." At said meeting the directors of Barker Delaware met and considered the offer made by C. H. Barker, C. A. Barker, and Erle P. Barker for the exchange of common stock of Barker California for common stock of Barker Delaware, the terms of which offer are set forth in said Exhibit "6." Said offer was accepted by Barker Delaware on December 28, 1923.

In accordance with the terms of said offer made by the aforesaid persons \$5,089,200 par value common stock of Barker Delaware, or 50,892 shares of said common stock, were issued in the names of said persons. Of the 9,488.66 shares of Barker California covered by the offer made by C. H. Barker, C. A. Barker, and Erle P. Barker, 1300.97 shares were owned by the employees of Barker California, as set forth in paragraph III above. Of said 50,892 shares of Barker Delaware so issued, 6,945.91 shares were held on behalf of said employees.

IX.

On December 28, 1923, Charles Lawrence Barker, Executor of the Estate of W. A. Barker, Deceased,

C. Lawrence Barker and C. L. Barker, Trustee, F. K. Colby, Trustee, and Pauline Barker, made an offer for the exchange of common stock of Barker California for common stock of Barker Delaware, the terms of which offer are set forth in Exhibit "6." Said offer was accepted by Barker Delaware on December 28, 1923.

In accordance with the terms of said offer made by the Lawrence Barker interests, \$4,387,000 of par value common stock of Barker Delaware, or 43,870 shares of said common stock, were [23] issued in the name of L. B., Inc., in accordance with the terms of the letter of December 28, 1923, set forth in Exhibit "6."

X.

On December 28, 1923, J. W. Beam and Martha B. Beam made an offer to Barker Delaware for the exchange of common stock of Barker California for common stock of Barker Delaware, the terms of which offer are set forth in Exhibit "6." Said offer was accepted by Barker Delaware on said date.

In accordance with the terms of said offer made by said persons, \$93,500 par value common stock of Barker Delaware, or 935 shares of said common stock, were issued in the names of said persons.

XI.

On December 28, 1923, a meeting of the Board of Directors of L. B., Inc. was held in Los Angeles, California. A copy of the minutes of said meeting is attached hereto, marked Exhibit "7." At said meeting a written offer was submitted by the Law-

rence Barker interests to L. B., Inc., the terms of which are set forth in Exhibit "7." Said offer was accepted by L. B., Inc. on said date, subject to the issuance of a permit by the Commissioner of Corporations of the State of California.

XII.

On the same day, December 28, 1923, another meeting of the Board of Directors of L. B., Inc. was held, a copy of the minutes of which meeting is attached hereto and marked Exhibit "8." A copy of the application made to the Commissioner of Corporations of the State of California, and his permit referred to in said minutes, are attached hereto and marked Exhibit "9." At said meeting temporary certificates of stock of L. B., Inc. were issued pursuant to the terms of the offer referred to above, as follows: [24]

C. Lawrence Barker.....	4,504.13
Pauline Barker.....	4,062.24
C. L. Barker, Trustee.....	2,350.23
Lawrence Barker, Executor of the Estate of W. A. Barker, deceased.....	8,353.67
F. K. Colby, Trustee.....	726.73
	<hr/>
	19,997.00

Thereafter the Board of Directors of L. B., Inc. resolved to make an offer to Barker Delaware for the exchange of common stock of said Barker Delaware for preferred stock of said Barker Delaware,

the terms of which offer are set forth in Exhibit "8."

XIII.

On December 29, 1923, Barker Delaware held a meeting of its Board of Directors, a copy of the minutes of which are attached hereto and marked Exhibit "10." At said meeting the offer made by L. B., Inc. was received and accepted, and pursuant to said offer and acceptance 43,870 shares of common stock of Barker Delaware were exchanged by L. B., Inc. for 20,870 shares of first preferred stock of Barker Delaware and 23,000 shares of second preferred of Barker Delaware. There was also received by said Barker Delaware at said meeting an offer in writing signed by J. W. Beam and Martha B. Beam, by the terms of which the said persons offered to exchange 935 shares of the common stock of said corporation owned by them for 935 shares of the second preferred capital stock of said corporation. Said offer was accepted, and said shares were issued in accordance therewith.

XIV

On December 29, 1923, a meeting of the Board of Directors of L. B., Inc. was held, a copy of the minutes of which is attached hereto and marked Exhibit "11." At said meeting an offer was made by Lawrence Barker, the terms of which are set forth in said [25] Exhibit "11," and said offer was accepted by L. B., Inc.

XV.

On January 3, 1924, there was a special meeting

of the Board of Directors of Barker Delaware held at New York City, New York, a copy of the minutes of which is attached hereto and marked Exhibit "12." In February, 1924, pursuant to the resolution adopted at said meeting, Barker Delaware sold to Bankers all of its remaining unissued first preferred stock of a par value of \$413,000.

XVI.

In February, 1924, Bankers notified L. B., Inc. and Lawrence Barker, individually, that it would purchase certain shares of first preferred stock of Barker Delaware pursuant to the terms of the agreement dated December 20, 1923, a copy of which is attached hereto and marked Exhibit "4." Thereafter, on February 11, 1924, there was delivered to Bankers 10,870 shares of first preferred stock of Barker Delaware in consideration of the payment by the Bankers of \$1,000,040, plus dividends accrued from January 1, 1924.

XVII.

On February 10, 1924, a meeting was held by the Board of Directors of L. B., Inc., a copy of the minutes of which is attached hereto and marked Exhibit "13." Pursuant to the resolution adopted at said meeting, and pursuant to the exercise by Bankers of their option, L. B., Inc. sold to Bankers 2,500 shares of first preferred capital stock of Barker Delaware for \$230,000, plus dividends accrued from January 1, 1924.

In addition to the above-mentioned sum of \$230,000, the books of L. B., Inc. show the receipt of

\$20,000 from Barker Delaware in respect of the sale of said shares. [26]

XVIII.

On February 27, 1924, there was a meeting of the Board of Directors of L. B., Inc., a copy of the minutes of which is attached hereto and marked Exhibit "14." Pursuant to the resolution adopted at said meeting, and pursuant to the exercise by Bankers of their option, L. B., Inc. sold to Bankers 2,500 shares of first preferred capital stock of Barker Delaware for \$230,000, plus accrued dividends to February 28.

In addition to the above-mentioned sum of \$230,000, the books of L. B., Inc. show the receipt of \$20,000 from Barker Delaware in respect of the sale of said shares.

On April 15, 1924, pursuant to the exercise by Bankers of their option, L. B., Inc. sold to Bankers 4,000 shares of first preferred capital stock of Barker Delaware for \$368,000, plus accrued dividends of \$1,003.33.

In addition to the aforementioned sum of \$368,000, the books of L. B., Inc. show the receipt of \$32,000 from Barker Delaware in respect of the sale of said shares.

On May 16, 1924, pursuant to the exercise by Bankers of their option, L. B., Inc. sold to Bankers 1,000 shares of first preferred capital stock of Barker Delaware for \$92,000, plus accrued dividends of \$937.50. In addition to the aforementioned sum

of \$92,000, the books of L. B., Inc. show the receipt of \$8,000 from Barker Delaware in respect of the sale of said shares.

XIX.

Prior to December 28, 1923, the cost or other basis for determining gain or loss on the sale or disposition of the shares of stock of Barker California in the hands of the persons who became the stockholders of L. B., Inc., was as follows:

Stockholder	No. of Shares	Basis
Estate of W. A. Barker.....	3,368.19	\$753,598.84
Estate of W. A. Barker.....	50	9,239.85
Pauline Barker	1,660	163,577.19
Lawrence Barker	1,841.50	235,031.57
Lawrence Barker, Trustee.....	960	126,345.26
F. K. Colby, Trustee.....	300	38,289.15
	<hr/> 8,179.69	<hr/> \$1,326,081.86

The fair market value of said shares immediately prior to December 28, 1923, was \$4,387,000, equal to a fair market value of \$536.326393 per share.

Said amount of \$1,326,081.86, if apportioned among 43,870 shares of common stock, or 43,870 shares of first and second preferred stock of Barker Delaware, equals \$30.227533 per share.

XX.

The opening Journal Entries of L. B., Inc. are as follows:

	Debit	Credit
Investment Account #1	\$4,387,000	
Capital Stock—common		\$2,000,000
Surplus, donated		2,387,000

Receipt of 43,870 shares of Barker Bros., Incorporated Common Capital Stock for the payment of subscription of the entire Capital Stock of this corporation as per agreement.

Investment Account #2	2,087,000	
Investment Account #3	2,300,000	
Investment Account #1		4,387,000

Exchange of Common Capital Stock—43,870 shares—Barker Bros., Incorporated for 20,870 shares First Preferred and 23,000 shares Second Preferred Capital Stock.

XXI.

On January 3, 1924, pursuant to resolutions of the Board of Directors and Stockholders of Barker Delaware, the Articles of Incorporation of said Barker Delaware were amended to change the authorized common capital stock of said corporation from 100,000 shares of \$100 par common stock to 100,000 shares of no par common stock. A copy of the minutes of said meeting of the Board of Directors is hereto attached as Exhibit “12.”

On January 5, 1924, said 100,000 shares of no par common stock were issued pro rata to the holders of \$5,089,200 par value of the \$100 par value common stock in exchange therefor.

Thereafter, said 100,000 shares of no par value common stock was the only authorized, issued, and outstanding common stock of said Barker Delaware.

XXII.

On March 1, 1924, Barker California conveyed all of its assets to Barker Delaware, subject to all

of the outstanding liabilities of Barker California, including the liability for the outstanding preferred stock of Barker California. Barker Delaware assumed the liabilities of Barker California, including the liability for the said preferred stock. The foregoing transfer of assets and assumption of liabilities was accomplished pursuant to resolutions adopted by the Boards of Directors of the two corporations.

Thereafter, Barker Delaware redeemed and retired the entire outstanding issue of preferred stock of Barker California.

On said March 1, 1924, there were issued and outstanding shares of the capital stock of said Barker Delaware as follows:

25,000 shares First Preferred Stock
 23,935 shares Second Preferred Stock
 100,000 shares no par Common Stock. [29]

XXIII.

The Board of Directors of L. B., Inc. in the following years adopted resolutions, the terms of which declared dividends, payable pro rata, to stockholders of record in the following amounts, to-wit:

Year	Dividend
1925	\$ 60,000.00
1926	140,000.00
1927	140,000.00
1928	140,000.00
1929	180,000.00

Year	Dividend
1930	100,000.00
1931	140,000.00
1934	120,000.00
1936	20,000.00
1937	57,000.00
1938	45,000.00
1939	65,000.00
1940	61,000.00
1941	56,000.00
1942	30,000.00
1943	110,264.64

and said amounts were by said corporation paid or credited thereafter.

XXIV.

The schedule attached hereto and marked Exhibit "15," which said schedule is hereby referred to and incorporated herein, accurately sets forth as of the dates to which said schedule refers, the balances in the account designated earned surplus as recorded on the books of L. B., Inc. [30]

XXV.

During the taxable year 1923, L. B., Inc. disposed of 10,870 shares of Barker Delaware first preferred stock for \$1,000,040; that the said stock so disposed of by L. B., Inc. was carried on the books of L.B., Inc. at a cost of \$1,087,000; and that the difference of \$86,960 was charged to the account designated as Surplus Donated or Capital Surplus or Paid In Surplus in the books of account of L. B., Inc. Said

charge of said difference has not been reflected in Exhibit "15."

XXVI.

Of the 20,870 shares of Barker Delaware first preferred stock and 23,000 shares of Barker Delaware second preferred stock, referred to in paragraph XXII hereof, the following shares were sold or disposed of by L. B., Inc. during the following years and for the following amounts: [31]

Date	1st Pfd.	2nd Pfd.	Amt. Received
12/29/1923.....	10,870 shares		\$1,000,040.00
2/11/1924.....	2,500 shares		250,000.00
2/26/1924.....		1,500 shares	150,000.00
2/28/1924.....	2,500 shares		250,000.00
4/15/1924.....	4,000 shares		400,000.00
5/16/1924.....	1,000 shares		100,000.00
7/16/1924.....		200 shares	20,000.00
1/31/1925.....		500 shares	50,000.00
2/16/1925.....		760 shares	76,000.00
8/12/1925.....		405 shares	40,500.00
2/15/1926.....		920 shares	92,000.00
9/14/1926.....		335 shares	33,500.00
2/21/1927.....		1,000 shares	100,000.00
3/ 1/1927.....		35 shares	3,500.00
9/20/1927.....		421 shares	42,100.00
2/24/1928.....		684 shares	68,400.00
5/30/1928.....		16,240 shares	1,418,945.42
Totals.....	<u>20,870 shares</u>	<u>23,000 shares</u>	<u>\$4,094,985.42</u>

Said first and second preferred stock of Barker Delaware was carried upon the books of L. B., Inc. at a cost of \$100 per share.

In addition to the foregoing first preferred shares, acquired as set forth in paragraph XIII hereof, L. B., Inc., on May 16, 1924, purchased 1,000 shares

of said first preferred stock at \$92 per share, or a total cost of \$92,000. Said stock so acquired was disposed of as follows:

Date	No. of Shares	Amt. Received
9/15/1924.....	250	\$23,000
10/ 9/1924.....	250	23,000
12/ 6/1924.....	250	23,000
1/ 5/1925.....	250	23,000
Totals.....	<u>1,000</u>	<u>\$92,000</u>

In addition to the aforementioned second preferred stock of Barker Delaware, acquired as set forth in paragraph XIII hereof, L. B., Inc. purchased 615 shares of said second preferred stock as follows: [32]

Date	No. of Shares	Price Paid
7/28/1924.....	150	\$15,000
1/ 9/1925.....	25	2,500
2/ 6/1925.....	50	5,000
3/12/1925.....	100	10,000
4/17/1925.....	25	2,500
1/ 6/1926.....	50	5,000
1/27/1926.....	40	4,000
10/ 7/1926.....	15	1,500
3/ 1/1927.....	41	4,100
8/31/1927.....	50	5,000
9/29/1927.....	19	1,900
3/ 1/1928.....	50	5,000
Totals.....	<u>615</u>	<u>\$61,500</u>

All of said shares of second preferred stock so purchased were sold on February 24, 1928, for \$61,500.

XXVII.

From the date of the formation of L. B., Inc. to December 31, 1943, stock of said corporation has

been issued, transferred and reissued, all as set forth in a schedule attached hereto and marked Exhibit "16."

The stock in the amount of 2,350.23 shares originally standing in the name of Lawrence Barker, Trustee, as set forth in said exhibit, was held by him by and under the terms of certain gifts. Common stock of Barker California was given by W. A. Barker, during his lifetime, and Pauline Barker, to their grandchildren, then minors, who were children of Lawrence Barker. These children are Elizabeth Barker Forbes Derby, Lawrence Barker, Jr., and William A. Barker II. The interest given to each grandchild under the terms of said gift amounted to 320 shares of the common stock of Barker California, or a total of 960 shares which were exchanged in the transactions described in paragraphs IX, XI, and XII hereof. On November 27, 1934, Elizabeth Barker Forbes Derby, who had then reached her majority, transferred her interest to her father, Lawrence Barker, as Trustee, for the use and benefit of said Elizabeth Barker Forbes Derby until she reached the age of 30 years.

The 928 shares of L. B., Inc., formerly standing in the name of Horace S. Wilson and Philip R. Johnson, Trustees, were portions [33] of the corpus of three trusts created by Lawrence Barker, as Trustor, on October 31 and November 8, 1923. The aforesaid children of Lawrence Barker, to wit: Elizabeth Barker Forbes Derby, Lawrence Barker, Jr., and William A. Barker II, were the beneficiaries under said trusts. The balance of the corpus

of each trust consisted of policies of insurance upon the life of said Lawrence Barker. Each trust provided that it should terminate when its beneficiary reached the age of 30 years.

On March 30, 1943, the trusts under which 2350.23 shares of L. B., Inc. stock stood in the name of Lawrence Barker, Trustee, and 928 shares of L. B., Inc. stock stood in the name of Horace S. Wilson and Philip R. Johnson, Trustees, were terminated, and the shares distributed to the beneficiaries thereof as follows:

1092.75 shares to Elizabeth Barker Forbes Derby;
1092.74 shares to Lawrence Barker, Jr.; and
1092.74 shares to Wililam A. Barker II.

Frank and Harry Berman, sometimes stockholders in Lawrence Barker, Inc., were brothers of Pauline Barker. Each originally acquired his share by gift from Pauline Barker. Pauline Barker repurchased the shares of Harry Berman on June 10, 1936, agreeing to pay therefor the sum of \$32,500.

Pauline Barker repurchased the shares of Frank Berman on April 21, 1937, pursuant to agreement, whereby Pauline Barker forgave a debt owing to her from said Frank Berman in the amount of \$43,187, and further promised to pay to said Frank Berman, or his wife should she survive him, an annuity of \$3,600.

XXVIII.

On or about December 30, 1943, Lawrence Barker and Mrs. W. A. Barker each transferred to L. B.,

Inc. thirty (30) shares of the capital stock of L. B., Inc., and Lawrence Barker and Mrs. W. A. Barker each were credited with the amount of \$5,000 against their indebtedness to L. B., Inc. The shares of stock so received [34] by L. B., Inc. were retired by it and the certificates evidencing such shares were cancelled. The 30 shares of capital stock of L. B., Inc. which Lawrence Barker and Mrs. W. A. Barker each transferred to L. B., Inc., as set forth herein, were acquired by them as part of the 19,997 shares of stock issued by L. B., Inc. to the Lawrence Barker interests on December 28, 1923, in exchange for the transfer by the Lawrence Barker interests to L. B., Inc. of 8179.69 shares of common stock of Barker California, all as set forth in Paragraph XII and Paragraph XIX hereof.

Dated: October 26, 1949.

IRELL & MANELLA,

By /s/ ARTHUR MANELLA,

Attorneys for Plaintiffs.

ERNEST A. TOLIN,

United States Attorney.

E. H. MITCHELL, and

EDWARD R. McHALE,

Assistant United States Attorneys,

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue.

By /s/ EUGENE HARPOLE,

Attorneys for Defendant. [35]

Exhibit 1

The undersigned stockholders of Barker Bros., Inc., a corporation, in consideration of the sum of \$10. to each in hand paid by Hunter, Dulin & Co., a corporation, on the execution of this agreement, hereby give to said Hunter, Dulin & Co., the right to purchase all of the stock of said Barker Bros. Inc., which the undersigned now own, as set opposite their respective names hereinbelow, or in which they have any interest, and also all their right, title and interest in and to any additional stock of said Barker Bros. Inc. now issued or hereafter to be issued, upon the following terms and conditions:

Hunter, Dulin & Co. shall have the right to make a full investigation of all of the books and accounts of said Barker Bros. Inc., and the undersigned agree to have said Barker Bros. Inc. furnish all facilities necessary for such investigation and to have such accounting made and reports delivered as Hunter, Dulin & Co. may designate.

This agreement shall remain in effect for a period of ninety days from date hereof unless, in order to consummate the sale then pending, it shall be necessary in the judgment of said Hunter, Dulin & Co. to have a further examination and analysis made of the affairs of said Barker Bros. Inc., and in such event this agreement shall be extended for a reasonable time beyond ninety days.

During the life of this agreement the undersigned agree to cause the business of said Barker Bros. Inc. to be carried on continuously in a highly efficient and proper manner.

The undersigned agree that Hunter, Dulin & Co. shall have the right to assign this agreement with all its rights and obligations to any person, firm or corporation selected by said Hunter, Dulin & Co.

In the event that said Hunter, Dulin & Co. or their [36] assignee decide to purchase said stock in accordance with this agreement, the undersigned agree to sell all of said stock now owned by them or to which they have any right, title or interest, and all their right to any further stock of said Barker Bros. Inc., now issued or hereafter to be issued, and also all their right, title and interest to any other property and assets of said Barker Bros. Inc., upon payment to the undersigned for the same on the basis of \$10,500,000. for the entire net worth, including good will, of said Barker Bros. Inc., each of the undersigned to receive from the amount paid such proportion thereof as the number of shares set opposite his name bears to the total number of shares of all subscribers hereto.

In the event of such purchase, the undersigned agree to deliver their stock to such person or persons and at such place as said Hunter, Dulin & Co. may designate upon payment therefor of the amount agreed herein in cash or in cash and securities acceptable to the undersigned in proportion to the interest of each, and the undersigned further agree that in such event they will pay to Hunter, Dulin & Co. at the time of said sale a commission of 5% of the total consideration involved in such sale which shall be deducted proportionately from the amounts payable hereunder to the undersigned, and shall also

be payable in cash or in cash and securities mutually acceptable in the same proportion payable to the undersigned.

In Witness Whereof, the undersigned have subscribed this agreement at Los Angeles, California, as of the 19th day of October, 1923, and have set opposite their respective names the number of shares of stock of said Barker Bros. Inc. owned or subscribed for by them. This agreement may be executed in triplicate.

PAULINE BARKER,
C. LAWRENCE BARKER,
C. LAWRENCE BARKER,
Trustee,
W. A. BARKER,

By C. LAWRENCE BARKER,
Executor. [37]

Exhibit 2

January 16, 1924

Messrs. Hunter, Dulin & Co.
California Bank Building
Los Angeles, California
Att'n Mr. E. S. Dulin

Gentlemen :

In consideration of your returning to me the option that you hold upon the Pauline Barker; C. Lawrence Barker; C. Lawrence Barker, Trustee; and W. A. Barker Estate holdings in Barker Bros., Inc. Common Stock, together with the valuable

services rendered in making it possible to consummate the present reorganization, I agree to the following:

1. From the first proceeds received by me from the sale of the securities of the new company, I agree to pay you forthwith a cash consideration of \$50,000.00.

2. On the investment of funds received from the sale of the securities that we will receive in the reorganization and also through moneys that I may have for investment, it is our intention to consult with your firm and give you first consideration in selecting the purchase of my investments as long as the present personnel is in your company.

3. On any publicity announcing the reorganization, etc., I will endeavor to have your name representing me as my broker in the transaction appear.

4. If for any unforeseen reason the present negotiations with the C. H. Barker branch of the family and Marshall Field, Glore, Ward & Company do not materialize, I agree to renew my option with you and also to give you full cooperation in obtaining in writing the verbal understanding between the other members of the family and the employes to effect the sale as originally contemplated by [38] you.

Yours very truly,

CLB:DW Accepted

Hunter, Dulin & Co.

By E. S. Dulin [39]

Exhibit "3"

Agreement

This Agreement made this 20th day of December, 1923, by and between C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, and F. K. Colby, Trustee, of the City of Los Angeles, State of California, the parties of the first part, and C. H. Barker, Clarence A. Barker and Erle P. Barker of Los Angeles, California, the parties of the second part.

Witnesseth:

That Whereas the parties to this agreement desire to reorganize the corporate affairs of Barker Bros. Inc. a corporation of which they are stockholders, and in such reorganization to readjust the several stock interests of the respective parties hereto in the manner hereinafter set forth,

Now, Therefore, the parties agree as follows:

1. The plan and method for carrying out and providing for the reorganization is set forth in Exhibit "A" attached hereto and by reference made a part hereof, and the parties to this agreement do hereby agree to do each and every thing and to execute any and all documents necessary, expedient or proper to carry out said plan and make same effective in all respects.

It is agreed that the final result to be accomplished is to have the respective interests of the parties in the reorganized corporation arranged as follows:

(a) First parties, through the Securities Company owned by them and referred to in said plan, to have a total of:

(1) \$1,000,000.00 in cash.

(2) \$1,000,000.00 First preferred Stock of the reorganized corporation, with provisions as set forth in Exhibit "3" attached to said [40] plan.

The first parties shall have the right to sell any or all of this preferred stock as they may desire, and it is agreed that in the event the first parties sell any portion of said stock within one year from date hereof, the reorganized corporation will pay to the first parties the cost of making such sale not to exceed \$8.00 on each \$100.00 par value of the stock so sold within one year from date hereof.

(3) \$2,300,000.00 in Second Preferred Stock of the reorganized corporation, with provisions as set forth in Exhibit "3" attached to said plan.

(b) The second parties, together with the employees of the present Barker Bros. corporation who own stock, shall be the owners of all of the common stock of the reorganized corporation.

It is understood that the plan set forth in Exhibit "A" attached hereto may be modified in any respect as to details as desired by the parties, provided, however, that the final results hereinbefore set forth are obtained. A. California corporation may be used as the reorganized corporation, if desired by

the parties of the first part and if the plan can be satisfactorily carried through with such a corporation.

(2) The said sale shall be deemed effective as of January 1, 1924. The parties of the first part shall be entitled to interest upon the sum of \$4,300,000. at the rate of 7% per annum from said first day of January, 1924, until the date upon which cumulative dividends on such preferred stocks shall begin to accrue to the benefit of [41] the first parties, and said interest shall be paid to the first parties within ten days from the date of delivery of said preferred stocks to them. The plan set forth herein shall be consummated as rapidly as reasonably possible and in any event within sixty days after demand, which demand may be made at any time after April 1, 1924, upon the parties of the second part by the parties of the first part, and if it is not then consummated within said sixty days after such demand (the failure to so consummate being due to no fault of or delay caused by any of the parties of the first part) then the parties of the first part shall thereupon be released from all obligations to carry out the plan herein provided.

3. The parties of the first part agree to assist the parties of the second part and the future management of Barker Bros. Incorporated in every way possible in carrying out this agreement and also to assist in the reorganization of the new Delaware corporation, and in helping to maintain and perfect the personnel of the new organization. They agree

to use their influence with the present employees of Barker Bros. Inc., to secure from them full support for and cooperation with the organization. It is understood, however, that the expenses of the reorganization of the new Barker Bros. corporation of Delaware will be borne by said corporation, and that the parties of the first part personally will not be required to pay any portion of such reorganization expenses.

4. In order fully to protect the parties of the first part as to their interests in the preferred stock of the reorganized corporation, it is agreed by the parties hereto that a man mutually satisfactory to all parties will be secured and made president of the new reorganized Barker Bros. corporation, and that a suitable compensation may be paid by the corporation to such a man in order to obtain a man of high standing in the business world. It is hereby agreed that Mr. H. S. McKee shall be the man [42] first employed to act as president of Barker Bros. Incorporated, and that said H. S. McKee shall not be removed as such president or relieved of any of the duties of said president without either (1) the consent of the parties of the first part; or (2) the concurring consent of the representative on the Board of Directors of Marshall Field, Gore, Ward & Co., and the parties of the second part. In the event of resignation or removal of said H. S. McKee a new man satisfactory either (1) to the parties of the first part and the parties of the second part; or (2) satisfactory to the representative of Marshall Field, Gore, Ward & Co. on the Board of

Directors, and the parties of the second part, shall be employed to take the place of the said H. S. McKee. The powers and duties of the president shall be as set forth in the proposed by-laws of the corporation heretofore agreed upon by the parties hereto, copy of which is attached hereto marked Exhibit "2."

In order further to protect the interests of the parties of the first part, the parties of the second part agree that they will pool all of the common stock of the new Barker Bros. corporation owned by them in a voting trust agreement with the Title Insurance and Trust Company, or other mutually satisfactory trust company as trustee, which said voting trust agreement shall be substantially in form set forth in Exhibit "B" attached hereto.

Whenever the parties of the first part shall cease to be the owners of a total of at least \$1,000,000.00 of the preferred stock of all classes originally issued to them, the right of the parties of the first part to participate in the selection or the removal of any president of Barker Bros. Incorporated (except as such right is given in the provisions of the preferred stock owned by them) and the rights conferred under the pooling agreement shall cease and determine.

5. It is understood and agreed that the first permanent Board of Directors of the new Delaware corporation shall be composed [43] of nine persons, as follows:

H. S. McKee, President.

C. H. Barker, Chairman of the Board.

C. A. Barker, Vice President.

C. Lawrence Barker, Vice President.

Erle P. Barker, Vice President.

H. E. Benedict.

F. K. Colby, Secretary-Treasurer.

Elvon Musick.

Joseph Rhodes.

It is understood and agreed that a temporary Board of Directors may be used for purposes of organization in the State of Delaware and to carry through the necessary steps to complete the plan herein provided for; but that the resignations of the members of said Board will be accepted as soon as said plan is carried through and said Delaware corporation organized, and that the first permanent Board of Directors will then be elected composed of the persons above named.

It is understood and agreed that this agreement and all of the obligations of the parties of the first part hereunder, or in any of the exhibits attached hereto and made a part hereof, are made subject to the approval of and necessary orders issued by the Superior Court of the County of Los Angeles, State of California, in the matter of the Estate of W. A. Barker, deceased, now pending in said court. In the event of such approval and/or orders cannot be obtained within the time specified, or upon terms not acceptable to the parties of the second part, then this agreement shall not be operative,

and all parties hereto shall be released from any obligations herein contained. [44]

PAULINE BARKER,
C. LAWRENCE BARKER,
F. K. COLBY,
Trustee.

CHAS. LAWRENCE BARKER,
Executor of the Estate of
W. A. Barker, Deceased.
C. L. BARKER,
Trustee.

Parties of the first part.

C. H. BARKER,
ERLE P. BARKER,
CLARENCE A. BARKER,

Parties of the Second [45]
part.

Exhibit "A"

Barker Bros., a corporation of California, has an outstanding capital stock, as of October 31, 1923, of \$575,000. par value of preferred stock and \$1,-789,435. (17,894.35 shares par value \$100.00 each) par value of common stock. Of this common stock, 8,183.69 shares is owned by Mr. C. Lawrence Barker; 8,183.69 shares by Messrs. C. H., C. A., and Erle P. Barker; and the remaining 1,526.97 shares by certain employees.

The following plan has been devised for the purpose of reorganizing the corporation, re-adjusting

the interests therein of the Messrs. Barker, and also for the purpose of re-incorporating under the laws of Delaware:

Plan

(1) A. Delaware corporation with Articles of incorporation and By-laws substantially as set forth in Exhibits "1" and "2" respectively, attached hereto, will be formed with a capital stock of \$10,000,000 par value common stock and \$2,500,000 First Preferred par value \$100.00, and \$2,500,000 Second Preferred \$100.00 par value, and the entire \$10,000,000 par value common stock thereof will be issued to the present holders of common stock of Barker Bros. Inc. in exchange and for the total outstanding common stock of the California corporation on a basis that after the exchange each stockholder of the California corporation will have the same proportionate stock holdings in the Delaware corporation as he now has in the California corporation. After this exchange is completed the Delaware corporation will hold all of the outstanding common stock of the California corporation and the \$10,000,000 par value outstanding common capital stock of the Delaware corporation will be held in the same percentages as the present Barker Bros. Inc. holdings are held by the stockholders thereof.

(2) Another corporation will be formed under the laws of Delaware to be known as "Lawrence Barker, Inc." with power and [46] authority to purchase, hold and generally deal in securities and this corporation is hereinafter referred to as the "Securities Company." It will have an authorized

capital stock of \$. par value, either all of one class or of such classification, preferred and common stock as Mr. Lawrence Barker shall determine. Upon the formation of this corporation, Mr. Lawrence Barker will transfer to it his stock holdings in the Delaware Corporation, namely shares (\$. par value) of Common stock of the Delaware corporation, for all of the authorized capital stock of the Securities Company, viz: \$. par value. When this transaction is completed, the Securities Company will hold shares of Common stock of the Delaware corporation and Mr. Lawrence Barker, in lieu of holding said stock will hold all of the stock of the Securities Company.

(3) The respective Preferred stocks will contain terms and provisions set forth in Exhibit "3" attached hereto. The Delaware corporation will deliver \$2,087,000.00 First Preferred and \$2,300,000.00 Second Preferred stock to the Securities Company in exchange for all of the Common stock of the Delaware corporation held by the Securities Company. Upon the delivery to the Delaware corporation by the Securities Company of all of its Common stock, the latter company will expressly assume all stockholder's liability of C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased, and F. K. Colby, Trustee, for all indebtedness of the present Barker Bros. Inc., a California corporation, and the Delaware corporation shall agree to indemnify and save harmless

said above named persons of and from any and all such liability. In other words, the Delaware corporation will in effect exchange its outstanding par value stock (held by the Securities Company) into \$2,087,000.00 First Preferred stock, and \$2,300,000.00 Second Preferred stock. When these transactions are completed the Delaware [47] corporation will have outstanding \$2,087,000.00 First Preferred stock, \$2,300,000.00 Second Preferred stock, and \$5,426,662.61 Common stock; and the Securities Company will own only preferred stock, having then no common stock interest whatever in the Delaware corporation.

(4) After the foregoing transactions are consummated, the Delaware corporation will have outstanding \$2,087,000.00 First Preferred Stock, \$2,300,000.00 Second Preferred stock, and \$5,426,662.61 common stock. It will then put through the following transactions:

(a) It will amend its certificate of incorporation so as to change its common stock from par value to no par value and issue 100,000 shares of no par value common stock in exchange for this outstanding \$5,426,662.61 par value of common stock.

(b) The California corporation will call (or will have previously purchased) its outstanding preferred stock for redemption, and having called this stock, it will be appropriate action on the part of its directors and stockholders, sell and convey all of its business and assets to

the Delaware corporation and in consideration therefor, the Delaware corporation will (1) pay the California corporation an amount of cash equal to the redemption price of the preferred stock then outstanding; (2) will assume all of the obligations of the California corporation, and (3) will surrender for cancellation all of the outstanding common stock of the California corporation or credit thereon the receipt of the assets of the California corporation remaining after the payment of its debts, the redemption price of the [48] preferred stock as a liquidating dividend.

(c) The Delaware corporation will comply with the laws of California so as to entitle it to do business as a foreign corporation in said state, and will thereafter conduct the business. The California corporation may be dissolved when convenient.

(d) In the meantime in order to raise the funds necessary to redeem the existing preferred stock of the California corporation, the Delaware corporation will sell \$413,000.00 of the First Preferred stock to bankers.

(5) The Securities Company as the holder of \$1,087,000.00 First Preferred stock will sell the same to bankers, the same to be sold to the bankers along with the remaining \$413,000.00 First Preferred stock above mentioned. The Securities Company will grant to the bankers an option for the period of 120 days from and after the delivery of

said preferred stock or interim or temporary certificates thereof to the Securities Company, to purchase all or any of said remaining \$1,000,000.00 par value of First Preferred stock at the price of 92, and the Securities Company will further agree with the bankers that if at any time within eight (8) months after the expiration of said option of 120 days, it shall have a bona fide offer or offers for the purchase of said stock, it, the Securities Company, will at once notify the bankers of such offer and the price and terms thereof, and the bankers shall thereupon have fifteen (15) days from and after the receipt of such notice to purchase said stock upon the same price and terms. Upon demand, and as a part of said transaction Barker Bros. Inc., will pay to the Securities Company a discount amounting to the number of points less than par for which said stock may be sold. not exceeding, however, a discount of eight (8) points, such payment to be made by Barker Bros. [49] Inc. to the Securities Company at the time such sale is consummated. [50]

Exhibit 4

December 20, 1923

Messrs. C. H. Barker,
Clarence A. Barker,
Erle P. Barker, and
C. Lawrence Barker,
Los Angeles, California

Gentlemen:

It is our understanding that a corporation to be known as Barker Bros. Incorporated (hereinafter sometimes referred to as "the Company") will be organized under the laws of Delaware, with authorized capital stock of \$15,000,000.00, divided into \$2,500,000.00 First Preferred, \$2,500,000.00 Second Preferred, and \$10,000,000.00 par value common; and that said corporation will acquire in exchange for all of its common stock all of the outstanding common stock of the present Barker Bros. Inc. of California.

We understand also that a separate Delaware corporation (hereinafter referred to as the Securities Company) will be organized, to be owned and controlled by Mr. C. Lawrence Barker, and that he will transfer to said corporation all of the common stock of Barker Bros. Incorporated issued to him in exchange for his present stock of Barker Bros. Inc. of California; and that thereupon the Delaware company will issue to him \$2,087,000.00 aggregate par value of its First 7½% Preferred Stock and \$2,300,000.00 of its Second Preferred Stock, so that after said arrangement has been completed the capitalization of Barker Bros. Incorporated of Delaware will be as follows:

	Authorizing	Outstanding
7½% First Preferred Stock.....	\$2,500,000.00	\$2,087,000.00
7% Second Preferred Stock.....	2,500,000.00	2,300,000.00
Common Stock	10,000,000.00	5,426,662.61

It is also our understanding that subsequently the [51] \$5,426,662.61 par value of the common stock

outstanding will be converted into 100,000 shares of no par value common stock by amendment of the Articles of Incorporation of the Delaware corporation.

Subject to the consummation of the foregoing transactions and the working out and approval of the details thereof by counsel for the respective parties, we hereby offer to purchase from Barker Bros. Incorporated the \$413,000.00 First Preferred stock remaining unissued and to purchase from the Securities Company \$1,087,000.00 principal amount of the 7½% First Preferred Stock of Barker Bros. Incorporated at 92 and accrued dividends, upon the following terms, conditions, representations and warranties, namely:

1. The Securities Company will grant to the bankers an option for the period of one hundred twenty (120) days from and after the delivery of said preferred stock or interim or temporary certificates thereof to the Securities Company, to purchase all or any of said remaining \$1,000,000.00 par value of First Preferred stock at the price of 92, and the Securities Company will further agree with the bankers that if at any time within eight (8) months after the expiration of said option of one hundred twenty (120) days, it shall have a bona fide offer or offers for the purchase of said stock, it, the Securities Company, will at once notify the bankers of such offer and the price and terms thereof, and the bankers shall thereupon have fifteen (15) days from and after the receipt of such notice

to purchase said stock upon the same price and terms. Upon demand and as a part of said transaction, Barker Bros. Inc. will pay to the Securities Company a discount amounting to the number of points less than par for which said stock may be sold, not exceeding, however, a discount of eight (8) points, such payments to be made by Barker Bros. Inc. to the Securities Company at the time such sale is consummated.

2. The authorized amount of the $7\frac{1}{2}\%$ First Preferred stock shall not exceed \$2,500,000. [52]

3. The provisions of the First and Second Preferred and Common stock shall conform to the provisions set forth in Exhibit "A" hereto attached.

4. Stock certificates are to be interchangeably transferable in New York and Los Angeles. In New York the Mechanics and Metals Bank will be appointed transfer agent and the same party will be appointed registrar. In Los Angeles the Pacific Southwest Trust and Savings Bank or Security Trust & Savings Bank will be appointed transfer agent and the same party will be appointed registrar.

5. The Company will agree that so long as any of the First Preferred stock remains outstanding

(a) We shall have a representative designated by us on the Board of Directors of the Company.

(b) We shall agree with the Company on a man who shall be president of the Company.

6. The Company will furnish us within 45 days of the close of each calendar month, an officially certified consolidated income account for such month, consolidated balance sheet at the close of such month with reasonable detail, and such other information as we may reasonably request from time to time with reference to the operation, business and financial condition of the Company and its subsidiary companies. Within 90 days after the close of each calendar year the Company will furnish us with a detailed balance sheet showing the financial condition of the Company for the close of such year and a detailed income account for the close of such year, same to be made by a certified public accountant, if requested by us.

7. All costs and expenses in connection with and incidental to the issue of the First Preferred stock including the preparation and issue of temporary and definitive stock certificates and interim certificates, if any, and all charges and expenses in connection with the issue of such interim receipts, stamp taxes [53] and other taxes and counsel fees, including those of our counsel, as well as the compensation and expenses of the Transfer agents and Registrars, will be paid by the Company.

8. In order to qualify the First Preferred stock under the so-called Blue Sky Laws in States, in which we or any members of the selling syndicate or group, which we may form, may desire to offer this stock for sale, the Company will register as a foreign corporation and file the acceptance of service required and will otherwise cooperate with

us to the extent necessary in order to comply with the laws of such state and in connection therewith will, upon request and without cost to us, furnish us with all such certificates, statements, and other instruments or papers as may be required to comply with such laws, and will also cooperate with us in the preparation of descriptive sale circulars and furnish us a letter, signed by the president of the Company, to accompany such circular and containing such information and data as we may reasonably request, and the First Preferred stock shall conform to all statements and representations which may be contained in such circular or letter, such circular and descriptive letter to be first approved by the Company and its counsel before being set out.

9. The Company will furnish, or cause to be furnished to us, opinions of counsel approved by us, approving the validity of the First Preferred stock and will also furnish, or cause to be furnished to us, all legal papers, instruments, etc., requested by us in connection with this transaction.

10. The Company will deliver to us either stock certificates in temporary form of interim certificates therefor, on or about February 1, 1924, such date to be subject to extension only with our written consent. In the event that the interim certificates shall be issued, the stock certificates, either in temporary or definitive form, shall be issued and delivered to release the funds deposited under the interim certificates, not later than July 1, 1924, subject to our right to extend such date. In the event

that interim certificates are issued and subsequently stock certificates in temporary or definitive form are not issued and delivered for exchange for the interim certificates, your company will indemnify and save us harmless from any and all damages, liability, expenses and commissions which may arise or which we may incur by reason of such failure to deliver, but in no event to exceed \$10,000.00 in amount. If no interim certificates are issued, no amount whatever for such purposes shall be payable to us.

11. All legal matters in connection with this transaction including the validity and legality of the First Preferred Stock and the incorporation and organization of the Company, shall be subject to the approval of our counsel, who shall draw the form of the stock certificates.

12. The Company will immediately take all corporate and other legal proceedings which may be necessary to authorize the issue of the First Preferred Stock and interim receipts and will take all and every other step and action requisite to consummate this transaction.

13. Messrs. C. H., Clarence A. and Erle P. Barker will hold themselves responsible for the execution of the foregoing provisions pertaining to Barker Bros. Incorporated, and Mr. C. Lawrence Barker will hold himself responsible for the execution of those provisions pertaining to Securities Company. It being understood, however, that the liability of the respective parties under this agreement is contingent upon the successful working out

of the contract now being negotiated between Messrs. C. H., Clarence A. and Erle P. Barker on the one hand, and the interests represented by C. Lawrence Barker on the other hand.

14. It is understood that this agreement is subject to the furnishing of a satisfactory full audited report of the affairs [55] of the Company.

15. This offer must be accepted on or before December 31st, 1923, or same shall be deemed withdrawn.

16. It is understood by us that as soon as said corporations are formed the respective rights and liabilities of Messrs. C. H., Clarence A. and Erle P. Barker under this agreement may be assigned to and assumed by Barker Bros. Incorporated, and the respective rights and liabilities of Mr. C. Lawrence Barker may be assigned to and assumed by the Securities Company.

This letter, when accepted by you, within the time specified, will constitute a contract between us.

Yours very truly,

MARSHALL FIELD, GLORE,
WARD & CO.,

By /s/ A. L. WITHERS.

Accepted this 20th day of December, 1923.

/s/ C. H. BARKER,

/s/ ERLE P. BARKER,

/s/ CLARENCE A. BARKER,

/s/ C. LAWRENCE BARKER.

Exhibit 5

Minutes of First Meeting of Board of Directors
of Lawrence Barker, Incorporated

The Board of Directors of Lawrence Barker, Incorporated, met at Room 1111 Merchants National Bank Building, in the City of Los Angeles, State of California, on the 27th day of December, 1923, at the hour of 10 o'clock A.M., pursuant to the following consent signed by all of the Directors of said corporation, to wit:

Waiver and Consent

We, the undersigned, being all of the incorporators named in the Articles of Incorporation of Lawrence Barker, Incorporated, and all of the subscribers of the capital stock of said Corporation, and being all the directors named in said Articles of Incorporation, to serve for one year from and after its incorporation, or until our successors are elected, do hereby waive notice of a meeting of said directors to be held on the 27th day of December, 1923, at 10 o'clock A.M., at the office of the Corporation, in the City of Los Angeles, County of Los Angeles, State of California, and we do hereby consent to the holding of said meeting at said time and place for the transaction of any and all business which may be brought before said meeting.

Dated: December 27th, 1923.

H. F. PRINCE,
RICHARD L. NORTH,
JAS. A. GIBSON, JR.

Present: Directors Richard L. North and Jas. A. Gibson, Jr.

Absent: Director H. F. Prince.

The meeting was called to order by Director Richard L. North, who acted as temporary chairman, and thereupon Director Jas. A. [57] Gibson was elected temporary Secretary. Thereupon, the Board organized by electing unanimously the following officers:

President.....H. F. Prince

Vice-President.....Richard L. North

Secretary-Treasurer...Jas. A. Gibson, Jr.

Whereupon, Richard L. North, Vice-President, in the absence of the President, acted as Chairman of the meeting, and Jas. A. Gibson, Jr., Secretary of the company, acted as secretary.

There was then laid before the meeting the Certificate of Incorporation showing due incorporation of this corporation on the 22nd day of December, 1923, and also a certified copy of the Articles of Incorporation showing the filing of the original Articles with the Secretary of State on the 24th day of December, 1923, and the filing of a copy of said Articles certified by the Secretary of State in the office of the County Clerk of Los Angeles County, said county being the county in which the principal place of business of the corporation is situated.

On motion duly made, seconded and unanimously

carried, the following four resolutions were then adopted:

I.

Resolved: That this Board of Directors adopt, and there is hereby adopted the seal of the corporation bearing the words "Lawrence Barker, Incorporated, incorporated 1923 California," and having the design shown by the imprint thereof upon this page.

II.

Resolved: That the stock certificate of this corporation be signed by the President and Secretary, and that said certificate be in the following [58] form:

Incorporated Under the Laws of
the State of California

Number Shares

Lawrence Barker, Incorporated

Capital Stock \$2,000,000.00

Par Value \$100.00 each

This Certifies That
is the owner of shares of the capital
stock of Lawrence Barker, Incorporated, transfer-
able only on the books of the corporation in person
or by attorney on surrender of this certificate
properly endorsed.

In Witness Whereof, the corporation has caused
this certificate to be signed by its duly authorized

officers, and its corporate seal to be hereunto affixed
this day of, 19....

.....

Secretary.

President.

and

Be It Further Resolved: That pending the preparation of the engraved or printed certificates, the said stock certificates may be issued in typewritten form marked "Temporary Certificate," engraved or printed certificates to be obtained by the officers of the corporation and substituted therefor upon the surrender and cancellation of the temporary form of certificate duly endorsed.

III.

Resolved: That unless and until otherwise ordered by the Board of Directors, the regular meetings thereof be held on the 20th day of each month, at the hours of 2 o'clock P.M., at the office of [59] the corporation.

IV.

Resolved: That unless and until otherwise ordered by the Board of Directors, the office of this corporation shall be at 1111 Merchants National Bank Building, in the City of Los Angeles, State of California.

Thereupon, the Vice-President presented to the meeting the permit of the Commissioner of Corporations of the State of California, dated December 26th, 1923, permitting this corporation

"To sell and issue one share of its capital

stock to each of its three incorporators at par, for cash, lawful money of the United States, so as to net applicant the full amount of the selling price thereof."

Thereupon, upon motion duly made, seconded and unanimously carried, said permit of the Commissioner of Corporations was ordered filed with the Secretary and the Vice-President and Secretary of the corporation were authorized and directed to issue to H. F. Prince, Richard L. North and Jas. A. Gibson, Jr., one share each of the capital stock of the corporation, and upon payment by each of them of \$100.00 par value thereof, to deliver temporary certificates of the capital stock of this corporation to each of the above named.

There being no further business to come before the meeting, it was, upon motion duly made, seconded and unanimously carried, adjourned.

JAS. A. GIBSON, JR.,
Secretary. [60]

Exhibit 6

Barker Bros. Incorporated

Minutes of First Meeting of the Board of Directors

December 28, 1923

The first meeting of the Board of Directors of Barker Bros. Incorporated, was held on the 28th day of December, 1923, at 4:40 o'clock P.M. at 61 Broadway, New York City.

Present were Messrs. Warren B. Pinney, Henry F. Prince and Harry E. Benedict, being all of the

Directors of the Corporation and therefore a quorum.

Mr. Warren B. Pinney, the President, called the meeting to order and presided. Mr. Henry F. Prince was appointed Secretary of the meeting and kept the minutes.

The Secretary presented a written Call and Waiver of Notice pursuant to which the meeting was held, signed by all of the Directors and specifying the objects and purposes thereof, which was ordered filed with the minutes of the meeting.

The Chairman reported that at the first meeting of the Incorporators held this day, Mr. Warren B. Pinney had been elected President of the Corporation.

In addition to the office of President, the Chairman suggested that three officers be elected at this time, namely, a Secretary, Treasurer, and Assistant Treasurer, and thereupon, upon motion duly made and seconded, and upon the affirmative vote of all the Directors, the meeting so decided. Thereupon, Mr. Prince was nominated for the office of Secretary and also for the office of Treasurer, and Mr. Elvon Musick was nominated for the office of Assistant Treasurer. No further nominations were made, and the nominations were, on motion duly made and seconded, closed; and thereupon Mr. Prince was duly elected both Secretary and Treasurer of the [61] Corporation, and Mr. Musick was duly elected Assistant Treasurer of the Corporation, and the Chairman so declared. Thereupon Mr.

Prince took and subscribed the oath prescribed by law for the faithful performance of his duties as Secretary, and was directed to file the same with the minutes of the meeting.

Upon motion duly made and seconded and unanimously carried, the following resolution was duly adopted:

Resolved, That action be postponed until a later meeting of the Board on the question of the amount of bond to be given by the Treasurer of this Corporation, and that pending such action no bond be required.

Upon motion duly made and seconded, and by the affirmative vote of all the Directors, the following resolution was duly adopted:

Resolved, that the forms of Temporary Stock Certificates for the First Preferred, Second Preferred and Common stock, respectively, of this Corporation, presented at this meeting be and the same are hereby approved and adopted.

Upon motion duly made and seconded, and unanimously carried, the following resolution was duly adopted:

Resolved, that the Seal, the impression whereof is herewith affixed on the margin of these minutes, be and the same is hereby adopted as the corporate seal of this Corporation.

[Seal]

Mr. Prince presented his written resignation as a Director of the Corporation to take effect upon the

pleasure of this Board of Directors; whereupon, upon motion duly made and seconded, and by the affirmative vote of all the Directors, the following resolution was duly adopted: [62]

Resolved, that the resignation of Mr. Prince as a Director of this Corporation be and the same is hereby accepted; and that Mr. Garrett A. Brownback be and he is hereby elected to fill the vacancy thus created, and to serve until the election and qualification of his successor.

Mr. Garrett A. Brownback thereupon took his place at the Board. Mr. Prince continued to act as Secretary of the meeting.

Upon motion duly made and seconded, and unanimously carried, the following resolutions were duly adopted:

Resolved, that the Corporation Trust Company of America be and is hereby appointed the agent of this Corporation, in charge of the principal office in Delaware and of the books required by law to be kept in that office, and the agent upon whom process against this Corporation may be served in accordance with the laws of Delaware; and be

Further Resolved, that said Trust Company may apply to and act upon the instructions of Messrs. Musick, Burr and Pinney, of Los Angeles, California, the counsel of this Corporation, in respect to any questions arising in connection with said agency; and be it

Further Resolved, that the Secretary be and is hereby authorized to sign, and seal with the Corporation's seal, a certificate of authorization to said

Trust Company in the form submitted at this meeting; and be it

Further Resolved, that the Treasurer be and he is hereby authorized to pay all fees and expenses incident to and necessary for the organization of the Corporation.

Upon motion duly made and seconded, and unanimously carried the following resolution was adopted:

Resolved, that the proper officers of this Corporation [63] be and they are hereby authorized and directed on behalf of the Corporation, and under its corporate seal to make and file such certificate, report or other instrument as may be required by law to be filed in any state, territory or dependency of the United States or in any foreign country in which said officers shall find it necessary or expedient to file the same, to authorize the Corporation to transact business in such state, territory, dependency or foreign country.

The Chairman stated that the Corporation was formed for the purpose of reorganizing Barker Bros. Inc., a corporation of the State of California, and readjusting the interests of the stockholders therein. He stated that Barker Bros. Inc., the California corporation, has an outstanding capital stock of \$2,364,435.00 par value, consisting of \$575,000.00 par value of Preferred Stock and \$1,789,435.00 par value of Common Stock, and presented a balance sheet thereof showing its financial condition as of the close of business on November 30, 1923. All of the Directors, except Mr. Brownback, were familiar with the financial condition and af-

fairs of the California Corporation, the value of its business, properties and assets and its earnings history.

The Chairman thereupon presented written proposals signed by the holders of the entire issued and outstanding Common Stock of Barker Bros. Inc. wherein and whereby, upon the terms and conditions therein respectively set forth, they offered to exchange their holdings of such Common Stock for \$9,569,700 par value of the Common Stock of this Corporation. Thereupon, after consideration, the following preambles and resolutions were presented and the adoption thereof duly moved and seconded:

Whereas, the holders of the entire issued and outstanding Common Capital Stock, aggregating \$1,789,435 [64] par value, of Barker Bros. Inc., a corporation of the State of California, have by written proposals dated December 28, 1923, offered to exchange their said holdings for \$9,569,700 par value of the Common Capital Stock of this Corporation upon the terms and conditions respectively set forth in said proposals, true and correct copies of which are as follows: [65] and

Whereas, the proposals above set forth made by C. Lawrence Barker, Pauline Barker, Chas. Lawrence Barker, as Executor of the Estate of W. A. Barker, deceased, C. L. Barker as Trustee, and F. K. Colby as Trustee, have been made upon the further condition, in addition to the terms and provisions therein set forth, that this Corporation

shall enter into with them an agreement, in the form submitted at this meeting, wherein and whereby this Corporation shall assume all of their and each of their liability as stockholders of said Barker Bros. Inc. arising, or that may arise, out of any indebtedness of said Barker Bros. Inc., and to indemnify them save them harmless of and from any and all such liability, a true and correct copy of which form of agreement is as follows: [66] and,

Whereas, in the judgment of this Board of Directors it is to its interest and also necessary for the accomplishment of its corporate purposes that it acquire the entire outstanding Common Stock of Barker Bros. Inc., a California corporation as aforesaid, and said Common Stock of said corporation is of a value to this Corporation of at least \$9,569,700;

Now, Therefore, be it

Resolved, that this Board of Directors does hereby adjudge and determine that the entire issued and outstanding common capital stock of Barker Bros. Inc., a California corporation, aggregating \$1,789,435 par value, is of a value to this Corporation of at least \$9,569,700; and be it

Further Resolved, that the proposals hereinabove recited be and the same are hereby accepted upon the terms and conditions therein respectively set forth, and that the President of this Corporation be and is hereby authorized and empowered, in its name and for its account, to evidence such acceptance thereof on behalf of this Corporation, and that

the Secretary of this Corporation be and he is hereby authorized and directed to affix the seal of this Corporation to each such acceptance and thereupon duly attest the same; and be it

Further Resolved, that this Corporation enter into an agreement, the same to bear date December 28, 1923, by and between this corporation as party of the first part, and C. Lawrence Barker, Pauline Barker, Chas. Lawrence Barker as Executor of the Estate of W. A. Barker, deceased, C. L. Barker as Trustee, and F. K. Colby as Trustee, as parties of the second part, providing for the assumption and agreement of indemnity hereinabove referred to, said agreement to be in the form hereinabove in the preambles to these resolutions recited and set forth at length, and that said [67] agreement be executed in the name and for the account of this Corporation by its President or a Vice President, with its corporate seal thereunto affixed duly attested by its Secretary or an Assistant Secretary; and be it

Further Resolved, that the proper officers of this Corporation be and they are hereby authorized, empowered and directed, in its name and for its account, as and when the certificates duly endorsed in blank for transfer representing the issued and outstanding common stock of Barker Bros. Inc., said California corporation, are delivered to this Corporation in accordance with said proposals, to issue and deliver in exchange therefor, upon the basis and terms set forth in said respective proposals, certificates for fully paid and non-assessable

Common Stock of this Corporation to the amounts respectively required by the terms and provisions of said proposals; and be it

Further Resolved, that the Treasurer or an Assistant Treasurer of this Corporation be and he is hereby authorized, empowered and directed, in its name and for its account, to accept delivery to this Corporation of the certificates for the issued and outstanding Common Capital stock of said Barker Bros. Inc., a California Corporation as aforesaid; and be it

Further Resolved, that the \$9,569,700 par value of the Common Capital Stock of this Corporation, when certificates therefor shall be issued and delivered as hereinabove in these preambles and resolutions provided, shall be fully paid and non-assessable; and be it

Further Resolved, that the officers of this Corporation be and they are hereby authorized, empowered and directed in its name and for its account to take any and all such action, to make any and all such payments, and to execute, acknowledge and deliver all such instruments as may be necessary, proper and convenient [68] in their judgment in order to carry out the intendment of these resolutions and the terms and provisions of said proposals and agreement.

A vote was thereupon taken for or against the adoption of the foregoing preambles and resolutions. Mr. Pinney and Mr. Benedict voted in favor of the adoption thereof. Mr. Brownback, because of his unfamiliarity with the properties in question,

refrained from voting. The Chairman thereupon declared the foregoing preambles and resolutions duly adopted.

No further business was presented, and the meeting on motion adjourned.

HENRY F. PRINCE,
Secretary. [69]

Agreement

This Agreement made and entered into this 28th day of December, 1923, by and between Barker Bros. Incorporated, a Delaware corporation, party of the first part, and C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased, and F. K. Colby, Trustee, all of the City of Los Angeles, California, parties of the second part.

Witnesseth:

Whereas the parties of the second part under the terms of a certain agreement made the 20th day of December, 1923, have upon the terms and conditions therein set forth agreed to exchange and transfer to the party of the first part all of the common capital stock owned by said parties of the second part in Barker Bros. Inc., a California corporation.

Now Therefore, it is agreed between the parties as follows:

That for and in consideration of the exchange and transfer by the parties of the second part to

the party of the first part of all the common stock of said Barker Bros. Inc., the party of the first part hereby agrees to and does assume all of the liability of the parties of the second part, or either of them, as stockholders of said Barker Bros. Inc. arising, or that may arise, out of any indebtedness of said Barker Bros. Inc. to and including the date of this agreement; and party of the first part hereby agrees to indemnify and save harmless the said parties of the second part, and each of them, of and from any and all such liability.

In Witness Whereof the parties hereunto have executed this [70] agreement this 28th day of December, 1923.

BARKER BROS.

INCORPORATED,

By,

.....,

Party of the First Part.

PAULINE BARKER,

C. LAWRENCE BARKER,

Trustee,

C. LAWRENCE BARKER,

Executor,

F. K. COLBY,

Trustee. [71]

December 28, 1923

Barker Bros. Incorporated,
A Delaware Corporation
Gentlemen:

The undersigned, owning and/or controlling 8179.69 shares of the common capital stock of Barker Bros. Inc., a California corporation, hereby offer to sell, assign and transfer all of said stock to your corporation in exchange for 43,870 shares of the common stock of Barker Bros. Incorporated, a Delaware corporation.

Upon your acceptance of this offer at the place provided below, this offer and acceptance will constitute an agreement between us for the exchange of said stock, and same will be endorsed for transfer to your company, or order, at any agency directed by you.

You will please issue the \$4,387,000.00 par value of the common stock of your company in the name of "Lawrence Barker, Incorporated."

CHAS. LAWRENCE BARKER,
Executor of the Estate of
W. A. Barker, Deceased.

C. LAWRENCE BARKER,
C. L. BARKER,
Trustee.

F. K. COLBY,
Trustee.

PAULINE BARKER.

The above offer is hereby accepted:

BARKER BROS.
INCORPORATED,

By,

Attest:

.....,

Secretary. [72]

December 28, 1923

Barker Bros. Incorporated,
A Delaware Corporation

Gentlemen:

The undersigned, owning and/or controlling 226 shares of the common capital stock of Barker Bros. Inc., a California corporation, hereby offer to sell, assign and transfer all of said stock to your corporation in exchange for 935 shares of the common stock of Barker Bros. Incorporated, a Delaware corporation.

Upon your acceptance of this offer at the place provided below, this offer and acceptance will constitute an agreement between us for the exchange of said stock, and same will be endorsed for transfer to your company, or order, at any agency directed by you.

You will please issue the \$93,500.00 par value of the common stock of your company in the name

of J. W. Beam and Martha B. Beam, as joint tenants, with the right of survivorship.

J. W. BEAM,

MARTHA B. BEAM.

The above offer is hereby accepted:

BARKER BROS.

INCORPORATED.

By,

Attest:

.....,

Secretary. [73]

December 28, 1923

Barker Bros. Incorporated,

A Delaware Corporation

Gentlemen:

The undersigned, owning and/or controlling 9488.66 shares of the common capital stock of Barker Bros. Inc., a California corporation, hereby offer to sell, assign and transfer all of said stock to your corporation in exchange for 50,892 shares of the common stock of Barker Bros. Incorporated, a Delaware corporation, and the assumption by you and payment by you of the expenses, commissions and fees incurred by the undersigned in connection with the reorganization of Barker Bros. Inc., the readjustment of the stockholders' interests therein, and the issue of the preferred stock of your company through Marshall Field, Glore, Ward & Co., bankers.

Upon your acceptance of this offer at the place provided below, this offer and acceptance will con-

stitute an agreement between us for the exchange of said stock, and same will be endorsed for transfer to your company, or order, at any agency directed by you.

C. H. BARKER,
CLARENCE A. BARKER,
E. P. BARKER.

The above offer is hereby accepted:

BARKER BROS.
INCORPORATED,

By,

Attest:

.....,

Secretary.

P.S. The 50,892 shares of Common Stock above mentioned include the shares subscribed for by the Incorporators, assignments of the subscriptions whereof we hold. [74]

Barker Bros. Incorporated

First Meeting of Directors

Call and Waiver of Notice

We, the undersigned, being all of the Directors of Barker Bros. Incorporated, a corporation of the State of Delaware, do hereby call the first meeting of the Board of Directors thereof to be held on the 28th day of December, 1923, at 4:40 o'clock P.M. at 61 Broadway, New York City, for the purpose of completing the organization of the corporation, the acquisition of property, the issue of stock and the transaction of any and all such other and fur-

ther business as may properly come before the meeting; of which meeting we hereby waive all requirements of notice of the time, place and objects thereof.

WARREN B. PINNEY,
HARRY E. BENEDICT,
HENRY F. PRINCE. [75]

Secretary's Oath

State of New York,
County of New York—ss.

I, Henry F. Prince, do solemnly promise and swear that I will faithfully, impartially and justly perform the duties of Secretary of Barker Bros. Incorporated, a corporation of the State of Delaware, according to the best of my abilities and understanding. So help me God.

HENRY F. PRINCE.

Subscribed and sworn to before me this 28th day of December, 1923.

A. L. FIELD,

Notary Public, New York Co.

Commission expires March 30, 1925. [76]

December 28, 1923

Barker Bros. Incorporated,
Los Angeles, California

Gentlemen:

I hereby tender my resignation as a Director of your corporation to take effect upon the pleasure of your Board.

Yours very truly,

HENRY F. PRINCE. [77]

Exhibit 7

Minutes of a Special Meeting of the Board of
Directors of Lawrence Barker, Incorporated

The Board of Directors of Lawrence Barker, Incorporated, met at Room 1111 Merchants National Bank Building, in the City of Los Angeles, State of California, on the 28th day of December, 1923, at the hour of 10 o'clock a.m. pursuant to the following consent signed by all of the Directors of said corporation, to-wit:

Waiver of Notice and Consent

The undersigned directors of Lawrence Barker, Incorporated do hereby consent to the holding of a meeting at the Board of Directors of said Corporation, at Room 1111 Merchants National Bank Building, in the City of Los Angeles, California, on the 28th day of December, 1923, at the hour of 10 o'clock a.m., for the purpose of considering and acting upon any and all business which may be brought before said meeting, and we do hereby waive any and all notice of such meeting:

Dated: December 28th, 1923.

H. F. PRINCE,
JAS. A. GIBSON, JR.,
RICHARD L. NORTH.

Present: Directors Richard L. North and Jas. A. Gibson, Jr.

Absent: Director H. F. Prince.

In the absence of the President, Richard L.

North, Vice-President presided and Jas. A. Gibson, Jr., Secretary of the Company, acted as Secretary.

The Vice-President stated that this corporation had been formed, among other things, to buy, sell, hold, lease and in every other way acquire, dispose of, deal in and with property of every [78] kind and nature whatsoever, both real and personal, and including in addition to all other kinds of property, stocks and bonds of corporations, both private and municipal, notes, mortgages, and every other class and kind of securities whatsoever, and that an offer in writing had been received from C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased, and F. K. Colby, Trustee, to exchange \$4,387,000. par value of the common capital stock of Barker Bros. Incorporated, a Delaware corporation, for 19,997 shares of the capital stock of this corporation fully paid, their offer being in words and figures as follows:

Los Angeles, California, December 28, 1923.

Lawrence Barker, Incorporated,

Los Angeles, California

Gentlemen:

The undersigned have just concluded the exchange of a total of 8,183.69 shares of the capital stock of Barker Bros. Inc., a California corporation, for \$4,387,000. par value of the common capital stock of Barker Bros. Incorporated, a Delaware corporation.

We and each of us hereby offer to cause the said \$4,387,000. par value of the capital stock of said last

named company, viz: 43,870 shares thereof, of the par value of \$100. each to be transferred to Lawrence Barker, Incorporated, fully paid, in exchange for 19,997 shares of your company, to be issued fully paid to the undersigned in the following proportions:

C. Lawrence Barker.....	4,504.13 shares
Pauline Barker	4,062.24 shares
C. L. Barker, Trustee.....	2,350.23 shares
Chas. Lawrence Barker, Executor of the Estate of W. A. [79] Barker, deceased	8,353.67 shares
F. K. Colby, Trustee.....	726.73 shares

You will please advise us immediately if the foregoing offer is acceptable to you, and if so, obtain the necessary permit of the corporation Commissioner of the State of California for the issuance of said stock to the undersigned on the above consideration.

C. LAWRENCE BARKER,
PAULINE BARKER,
C. L. BARKER,
Trustee,

C. LAWRENCE BARKER,
Executor of the Estate of
W. A. Barker, Deceased.

F. K. COLBY,
Trustee.

It was stated by the Vice-President that the owners and holders of all the subscribed and issued common capital stock of Barker Bros. Inc., a California corporation (excepting directors' shares), including C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased, and F. K. Colby, Trustee, have transferred their holdings of said common stock to Barker Bros. Incorporated, a Delaware corporation, in exchange for all of the common capital stock of said Delaware corporation (excepting directors' qualifying shares); that said Delaware corporation is now the owner of all of the common capital stock of Barker Bros. Inc., a California corporation; and that \$4,387,000. par value of the common stock of said Delaware corporation, to which said C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased, and F. K. Colby, Trustee, are entitled in the proportions set forth in their foregoing offer to this corporation presented at this meeting, are fully worth the consideration demanded therefor, namely: 19,997 [80] shares of the capital stock of this corporation.

There was then presented to this meeting a financial statement of said Barker Bros. Inc., a California corporation, as of November 30th, 1923, duly attested by the Vice-President of that company, from which it appeared that the book value of the common stock of said company is now not less than the sum of \$335.99 per share.

The Vice-President then stated that the sole assets at this date of said Barker Bros., Incorporated, a Delaware corporation, consists of all of the subscribed and issued common capital stock of Barker Bros. Inc., a California corporation, totaling 17,894.35 shares thereof, which, according to the financial statement of said company presented at this meeting, have an aggregate book value of \$6,012,318.63. Therefore, when issued, said \$10,000,000. par value of the common capital stock of said Barker Bros. Incorporated, a Delaware corporation will, based on the financial statement of said Barker Bros. Inc., a California corporation, have a book value of \$60.12 per share. It, therefore, appears that 43,870 shares of said common capital stock of said Delaware corporation have an aggregate book value of \$2,749,490.20, which said C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased, and F. K. Colby, Trustee now offer to exchange for 19,997 shares of the capital stock of this corporation, par value \$100.

Thereupon, upon motion duly made, seconded and unanimously carried, it was

Resolved: That the foregoing offer presented at this meeting of the Board of Directors by C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased [81] and F. K. Colby, Trustee, to exchange 43,870 shares of Barker Bros. Incorporated, A Delaware corporation, for 19,997 shares of the capital stock of this corpora-

tion in the proportion to each set forth in said offer be, and the same is hereby accepted by this corporation; that the said 43,870 shares of said Barker Bros. Incorporated, a Delaware corporation, is fully worth the consideration demanded therefor, it appearing to this Board of Directors that said stock is worth in excess of the consideration demanded therefor, and that believing this to be so, that due showing of the value of the consideration to be received by this corporation in exchange for its said stock be made to the Corporation Commissioner of the State of California; and

Be It Further Resolved: That the Vice-President and Secretary of this corporation be, and they are hereby authorized, for and on behalf of this corporation, to make application to the Corporation Commissioner of the State of California to issue to said C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased and F. K. Colby, Trustee, shares of its capital stock, but not exceeding in the aggregate to any or all of them 19,997 shares, and that upon said permit of the corporation Commissioner having been issued to this corporation, the Vice-President and Secretary of this corporation be, and they are hereby authorized and directed to issue to

Lawrence Barker, Incorporated

C. Lawrence Barker.....	4,504.13 shares
Pauline Barker	4,062.24 shares
C. L. Barker, Trustee.....	2,350.23 shares

Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, de- ceased	8,353.67 shares
F. K. Colby, Trustee	726.73 shares

all in accordance with said permit of the Corpora-
tion Commissioner.

There was then presented to the meeting a communication from Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased, stating that the Estate of W. A. Barker deceased is the owner of 18,327.30 shares of said 43,870 shares of the common stock of said Barker Bros. Incorporated, a Delaware corporation, and that under the powers given to him as the Executor of said estate under the will of W. A. Barker, deceased, he is authorized to exchange 18,327.30 shares of said Delaware corporation for 8,353.67 shares of the capital stock of this corporation, and that he, as such executor, would this day obtain an order of the Superior Court of the State of California in and for the County of Los Angeles in the matter of said Estate of William A. Barker, deceased, pending therein, No. 56704, approving and confirming the exchange of said stock.

Whereupon, upon motion duly made, seconded and unanimously carried, this meeting of the Board of Directors adjourned until 4 o'clock p.m., to meet at the office of this corporation without further call or notice.

JAS. A. GIBSON, JR.,
Secretary. [83]

Exhibit 8

Minutes of an Adjourned Meeting of the Board of
Directors of Lawrence Barker, Incorporated

Pursuant to resolution adopted at the special meeting of the Board of Directors of this corporation, held at 10 o'clock a.m. of this day, an adjourned special meeting of said Board was held at the office of said corporation, Room 1111 Merchants National Bank Building, in the City of Los Angeles, State of California, at 4 o'clock p.m.

There were present: Directors Richard L. North and Jas. A. Gibson, Jr.

Absent: Director H. F. Prince.

In the absence of the President, Richard L. North, Vice-President, presided, and Jas. A. Gibson, Jr., the Secretary of the company, acted as Secretary of the meeting.

The Vice-President stated that application had been made to the Commissioner of Corporations of the State of California, for his permit permitting this corporation to sell and issue at par, 19,997 shares of its capital stock to C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased, and F. K. Colby, Trustee, and that this day the permit of said Corporation Commissioner had been issued to this corporation permitting it to so issue 19,997 shares of its capital stock, such stock when issued to be deposited with a depository to be selected by this corporation and approved by the Commissioner of Corporations, to be held as an escrow pending the further order of

said Corporation Commissioner; that in accordance with the offer of said C. Lawrence Barker, Pauline Barker, C. L. Barker, Trustee, Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased and F. K. Colby, [84] Trustee, presented at the meeting of the Board of Directors of this corporation, held at 10 o'clock a.m. of this day, said C. Lawrence Barker is entitled to 4,504.13 shares; Pauline Barker is entitled to 4,062.24 shares; C. L. Barker, Trustee is entitled to 2,350.23 shares; Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, Deceased, is entitled to 8,353.67 shares and F. K. Colby, Trustee is entitled to 726.73 shares of said capital stock.

Whereupon, upon motion duly made, seconded and unanimously carried, S. M. Haskins, 1111 Merchants National Bank Building, Los Angeles, California, was designated by this corporation as the depositary selected by it to hold said stock, to be issued to said above named persons, in escrow.

There was then presented to the meeting a true copy of the order made by the Judge of the Superior Court of the County of Los Angeles, State of California, in the matter of the Estate of William A. Barker, deceased, in words and figures following:

“In the Superior Court of the State of California
in and for the County of Los Angeles

In the Matter of the Estate of

WILLIAM A. BARKER,

Deceased.

ORDER APPROVING AND CONFIRMING
EXCHANGE OF CERTAIN PERSONAL
PROPERTY OF SAID ESTATE

Upon reading and filing of the return and account made by Charles Lawrence Barker, Executor, of an exchange of certain personal property of the Estate of William A. Barker, deceased, under authority given by will, and it appearing to the Court that said exchange is for the best interests of said estate and for the beneficiaries thereof,

It Is Hereby Ordered that the exchange of 3,418.19 shares of Barker Bros. Inc., made by said Executor for 18,327.30 shares of the common stock of Barker Bros. Incorporated, a corporation created and organized under [85] the laws of the State of Delaware, and the exchange of said 18,327.30 shares of the common stock of Barker Bros. Incorporated, for 8,353.664 shares of the capital stock of Lawrence Barker, Incorporated, a corporation created and organized under the laws of the State of California, be and the same is hereby approved and confirmed.

Done in Open Court this 28th day of December,
1923.

FRANK R. WILLIS,

Judge of the Superior Court.”

Thereupon, upon motion duly made, seconded and unanimously carried, it was

Resolved: That 43,870 shares of the common capital stock of Barker Bros. Incorporated, a Delaware corporation, having now been received by this corporation, the Vice-President and Secretary of this corporation be, and they are hereby authorized and directed to issue the following number of shares of the capital stock of this corporation to the persons hereinafter named, C. Lawrence Barker 4,504.13 shares; Pauline Barker 4,062.24 shares; C. L. Barker, Trustee 2,350.23 shares; Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased 8,353.67 shares and F. K. Colby, Trustee, 726.73 shares; and

Be It Further Resolved: That the Secretary of this corporation shall cause the certificates evidencing said stock to be deposited with S. M. Haskins, designated by this corporation as the depository for said stock, pursuant to the said permit of the Corporation Commissioner of this date, and that the receipt of said S. M. Haskins as such depository shall be filed with said Commissioner of Corporations, all in accordance with said [86] permit.

Thereupon, the Vice-President and Secretary of this corporation executed and issued temporary certificates to C. Lawrence Barker, for 4,504.13 shares; to Pauline Barker, 4,062.24 shares; to C. L. Barker, Trustee, 2,350.23 shares; to Chas. Lawrence Barker, Executor of the Estate of W. A. Barker, deceased, 8,353.67 shares; and to F. K. Colby,

Trustee, 726.73 shares of the capital stock of this corporation, proper revenue stamps being affixed and cancelled.

Thereupon, upon motion duly made, seconded and unanimously carried, the President of this corporation was authorized and directed, for and on behalf of this corporation, to offer to exchange said 43,870 shares of the common capital stock of said Barker Bros. Incorporated, a Delaware corporation, for \$2,087,000. par value of the first preferred stock and \$2,300,000. par value of the second preferred stock of said corporation, said offer being in words and figures following, to-wit:

December 28th, 1923

Barker Bros. Incorporated,
A Delaware Corporation:

Gentlemen:

The undersigned, Lawrence Barker, Incorporated, a corporation formed and existing under the laws of the State of California, hereby offers to exchange \$4,387,000.00 par value of the common stock of your corporation now owned by the undersigned, for \$2,087,000.00 par value of the First Preferred Capital stock and \$2,300,000.00 of the Second Preferred capital stock of your company (Barker Bros. Incorporated.)

Upon acceptance of this offer at the place provided below, and upon the delivery by you of said preferred stock, the undersigned will deliver to you, or to your [87] order, endorsed for transfer, the

above common stock of your company now owned by it.

LAWRENCE BARKER,
INCORPORATED,
By H. F. PRINCE,
President.

The above offer is hereby accepted:

BARKER BROS.
INCORPORATED,

By,

Attest:

.....,
Secretary.

and upon motion duly made, seconded and unanimously carried, the President of this corporation was authorized and directed, upon the acceptance of said offer by said Barker Bros. Incorporated, a Delaware corporation, to deliver to said Delaware corporation the Certificate or Certificates owned by this corporation evidencing 43,870 shares of the common stock of said Delaware corporation in exchange for certificates of said corporation evidencing \$2,087,000.00 par value of its first preferred stock and \$2,300,000.00 par value of its second preferred stock.

Thereupon, upon motion duly made, seconded and unanimously carried, it was

Resolved: That H. F. Prince, the President of this corporation, be, and he is hereby authorized, empowered and directed for and on behalf of this

corporation, to make all necessary offers in writing or otherwise, and to do all things necessary to accomplish the exchange by this corporation of 43,870 shares of the common capital stock of said Barker Bros. Incorporated, a Delaware corporation, for \$2,087,000.00 par value of the first preferred and \$2,300,000.00 par value of the second preferred stock of said corporation, and upon the completion of such [88] exchange, to at once notify this corporation thereof.

There being no further business to come before the meeting, it was, upon motion duly made, seconded and unanimously carried, adjourned.

JAS. A. GIBSON, JR.,
Secretary. [89]

Exhibit "9"

In the Corporation Department of the
State of California

In the Matter of the Application of
LAWRENCE BARKER, INCORPORATED, for
Permission to Sell and Issue Its Securities.

Supplemental Application

To the Hon. Edwin M. Daugherty, State Corporation Commissioner, 1006 Pacific Finance Building, Los Angeles, California.

Now Comes Lawrence Barker, Incorporated, and files this its application for a supplemental permit authorizing it to sell and issue 19,997 shares of its

capital stock and in support thereof respectfully represents:

I.

That applicant is a California corporation having an authorized capital stock of \$2,000,000., divided into 20,000 shares of the par value of \$100. each. That a permit has heretofore been issued authorizing applicant to sell and issue one share of its capital stock to each of its three incorporating directors, and with the application for said permit there was filed herein a certified copy of applicant's Articles of Incorporation and a true copy of its stock certificate, and that there is attached hereto, marked "Exhibit A" and made a part of this application, a true copy of applicant's by-laws.

II.

That applicant's office is located at No. 1111 Merchants National Bank Building in the City of Los Angeles, State of California; that it has neither assets nor liabilities and that the names and addresses of its officers are as follows, to wit:

H. F. Prince, President,

1111 Merchants National Bank Bldg.,
Los Angeles, California. [90]

Richard L. North, Vice-President,

1111 Merchants National Bank Bldg.,
Los Angeles, California.

James A. Gibson, Jr., Secretary,

1111 Merchants National Bank Bldg.,
Los Angeles, California.

III.

That there is attached hereto, marked "Exhibit B" and made a part of this application, a true statement as of November 30th, 1923, of the assets and liabilities of Barker Bros., Inc., a California corporation, by which statement the value of the common stock of said corporation appears to be and now is not less than \$335.99.

That Lawrence Barker, Lawrence Barker, Executor of the Estate of W. A. Barker, Deceased, Pauline Barker, C. L. Barker, Trustee, and F. K. Colby, Trustee, are the owners and holders of 8,183.69 shares of the common capital stock of said Barker Bros. Inc., and that they, with others, will transfer to Barker Bros., Incorporated, (a Delaware corporation, having an authorized capital stock of \$15,000,000., divided into 150,000 shares of the par value of \$100. each, of which 100,000 shares are common and 25,000 shares are first preferred and 25,000 are second preferred) 17,894.35 shares of the common capital stock of said Barker Bros. Inc., having an aggregate book value of \$6,012,318.63 in exchange for which said Delaware corporation will issue all of its common stock of the aggregate par value of \$10,000,000, giving a book value of \$60.12 to each share of the common stock of said Delaware corporation.

In payment for said 8183.69 shares of the common stock of said Barker Bros. Inc., transferred to said Delaware corporation, it will (at the direction and with the consent of said five (5) persons

above named) issue 43,870 shares of its common capital stock (having an aggregate book value of \$2,637,464.40) to applicant company. [91]

IV.

That thereafter and not before applicant desires and proposes (if permitted so to do) to sell and issue shares of its capital stock to said Lawrence Barker, Lawrence Barker, Executor of the Estate of W. A. Barker, deceased, and Pauline Barker, C. L. Barker, Trustee, and F. K. Colby, Trustee, but not exceeding in the aggregate to any or all of them 19,997 shares in payment and exchange for the 43,870 common shares of said Delaware corporation issued to applicant in payment for said 8183.69 common shares of said Barker Bros. Inc., transferred to said Delaware corporation by said five (5) persons.

That there is attached hereto, marked "Exhibit C" and made a part of this application, a true copy of a resolution of the Board of Directors of applicant company authorizing this application to be made and filed and the issuance of the securities as herein prayed for.

That upon the issuance of the shares of applicant company, as herein prayed for, applicant will issue its securities of the aggregate par value of approximately \$2,000,000. with assets on hand of a book value in excess of \$2,500,000.

Wherefore, applicant prays that a permit be issued authorizing it to sell and issue shares of its

capital stock to Lawrence Barker, Lawrence Barker,
Executor of the Estate hereinbefore recited.

Respectfully submitted,

LAWRENCE BARKER,
INCORPORATED,

By
Vice-President.

By
Secretary.

GIBSON, DUNN & CRUTCHER,
Attorneys for Applicant. [92]

State of California,
County of Los Angeles—ss.

James A. Gibson, Jr., being first duly sworn, de-
poses and says: that he is an officer, to wit: the
Secretary of Lawrence Barker, Incorporated, a
California corporation, applicant named in the fore-
going application; that he has read said application
and knows the contents thereof, and that the same
is true of his own knowledge.

.....

Subscribed and sworn to before me this 27th day
of December, 1923.

.....

Notary Public in and for the County of Los An-
geles, State of California. [93]

State Corporation Department of the
State of California

In the Matter of the Application of
LAWRENCE BARKER, INCORPORATED, for a
Certificate Authorizing It to Sell Its Securities.

SUPPLEMENTAL PERMIT

GIBSON, DUNN & CRUTCHER,
Attorney for Applicant.

The Issuance of This Certificate Is Permissive Only
and Does not Constitute a Recommendation or
Endorsement of Any Securities or Other Mat-
ters Herein Contained.

Lawrence Barker, Incorporated, a California cor-
poration, is permitted to sell and issue at par 19,997
shares of its capital stock to the persons and for the
considerations recited in its application.

The above permit is issued upon the following
condition:

(a) That, when issued, all certificates evidencing
any of the 19,997 shares authorized herein, in para-
graph, to be issued to the persons recited in
the application
shall be forthwith deposited with a depository, to
be selected by said permit [94] holder and approved
by the Commissioner of Corporations, to be held as
an escrow pending the further order of said Com-
missioner; that the receipt of such depository for
such certificates shall be filed with said Commis-
sioner of Corporations, and that while said certifi-

cates shall be so held, the holder of the shares evidenced thereby shall not sell, or offer for sale, or otherwise transfer, or agree to sell, or transfer such shares, until the written consent of said Commissioner shall have been obtained so to do.

Dated: Los Angeles, California, December 28, 1923.

[Seal]

EDWIN M. DAUGHERTY,
Commissioner of Corpora-
tions.

HRS:CR [95]

Exhibit 10

Barker Bros. Incorporated

Special Meeting of the Board of Directors

December 29, 1923

A special meeting of the Board of Directors of Barker Bros. Incorporated, was held on the 29th day of December, 1923, at 11:45 o'clock a.m., at 61 Broadway in the City of New York.

Present were Messrs. Warren B. Pinney, Harry E. Benedict and Garrett A. Brownback, being all of the Directors of the Corporation and therefore a quorum.

Mr. Warren B. Pinney, the President, called the meeting to order and presided. Mr. Henry F. Princee, the Secretary, acted as Secretary of the meeting and kept the minutes.

The Chairman presented a written Call and Waiver of Notice stating the objects and purposes of the meeting and signed by all of the Directors, pursuant to which the meeting was held and the

same was ordered filed with the minutes of the meeting.

On motion duly made and seconded, the minutes of the first meeting of the Board of Directors held on December 28, 1923, were duly approved.

The Chairman reported that pursuant to the action taken by the Board of Directors at the first meeting thereof, this Corporation had acquired the entire issued and outstanding Common Capital Stock of Barker Bros. Inc., a California corporation, by certificates therefor duly delivered to this Corporation, and that in exchange therefor certificates for \$9,569,700 par value of the Common Capital Stock of this Corporation had been issued.

The Chairman then presented written proposals from the holders of \$4,480,500 par value of the Common Capital Stock of this Corporation offering to exchange the same for \$2,087,000 par value [96] of the First Preferred Stock of this Corporation and \$2,393,500 par value of its Second Preferred Stock. He further reported that the holders of the remaining \$5,089,200 par value of the issued and outstanding Common Capital Stock of this Corporation were agreeable and had consented to such exchange; whereupon, after discussion and consideration, the following preambles and resolutions were presented:

Whereas, The holders of \$4,480,500 par value of the Common Capital Stock of this Corporation have offered to exchange the same for \$2,087,000 par value of the First Preferred Stock and \$2,393,500 par value of the Second Preferred Stock of this

Corporation, true and correct copies of which proposals are as follows:

December 29, 1923

Barker Bros. Incorporated
A Delaware Corporation:

Gentlemen:

The undersigned, Lawrence Barker, Incorporated, a corporation formed and existing under the laws of the State of California, hereby offers to exchange \$4,387,000.00 par value of the common stock of your corporation now owned by the undersigned, for \$2,087,000.00 par value of the First Preferred capital stock and \$2,300,000.00 of the Second Preferred Capital stock of your company (Barker Bros. Incorporated).

Upon the acceptance of this offer at the place provided below, and upon the delivery by you of said preferred stock, the undersigned will deliver to you, or to your order, endorsed [97] for transfer, the above common stock of your company now owned by it.

LAWRENCE BARKER,
INCORPORATED,

By HENRY F. PRINCE,

[Corporate Seal] President.

The above offer is hereby accepted:

BARKER BROS.
INCORPORATED,

By,

Attest:

.....,
Secretary.

December 29, 1923

Barker Bros. Incorporated
 A Delaware Corporation:
 Gentlemen:

We hereby offer to exchange 935 shares of the common stock of your company owned by us for 935 shares of Second Preferred capital stock of your corporation.

Upon acceptance of this offer at the place provided below, and upon delivery by you of said preferred stock, we will deliver to you or your order, endorsed for transfer, the above common stock of your company now owned by us.

You will please issue the stock of the undersigned to "J. W. Beam and Martha B. Beam, as joint tenants with the right of survivorship."

J. W. BEAM,
 MARTHA B. BEAM. [98]

The above offer is hereby accepted:

BARKER BROS.
 INCORPORATED,

By,

Attest:

.....,

Secretary.

and

Whereas, the holders of the remaining par value of the Common Capital Stock of this Corporation are agreeable to and have consented to such exchange, and, in the opinion of this Board, it is to

the interest of this Corporation that such exchange be made;

Now, Therefore, be it

Resolved, that the proposals hereinabove recited be and the same are hereby accepted upon the terms and conditions therein set forth, and that the President of this Corporation be and is hereby authorized and empowered, in its name for its account, to evidence such acceptance by noting on each of said proposals the acceptance thereof on behalf of this Corporation, and that the Secretary of this Corporation be and he is hereby authorized and directed to affix the seal of this Corporation to each such acceptance and thereupon duly attest the same; and be it

Further Resolved, that the proper officers of this Corporation be and they are hereby authorized, empowered and directed, in its name for its account, as and when the certificates duly endorsed in blank for transfer representing the \$4,480,500 par value of Common Capital Stock mentioned in said proposals are delivered to this Corporation in accordance with said proposals, to issue and deliver in exchange therefor, upon the basis and terms set forth in said respective proposals, to Lawrence Barker, Incorporated, certificates for \$2,087,000 par value of fully paid and nonassessable First Preferred Stock of this Corporation and for \$2,300,000 par value of its fully paid and non-assessable Second Preferred Stock, and to J. W. Beam and Martha B. Beam, as joint tenants, certificates [99]

for \$93,500 par value of its fully paid and non-assessable Second Preferred Stock; and be it

Further Resolved, that the \$2,087,000 par value of First Preferred Stock and \$2,393,500 par value of Second Preferred Stock of this Corporation, when certificates therefor shall be issued and delivered as hereinabove in these preambles and resolutions provided, shall be fully paid and non-assessable; and be it

Further Resolved, that the officers of this Corporation be and they are hereby authorized, empowered and directed in its name and for its account to take any and all such action, to make any and all such payments, and to execute, acknowledge and deliver all such instruments as may be necessary, proper or convenient in their judgment in order to carry out the intendment of these resolutions and the terms and provisions of said proposals.

A vote was thereupon taken for or against the adoption of the foregoing preambles and resolutions. Mr. Pinney and Mr. Benedict voted in favor of the adoption thereof. Mr. Brownback because of his unfamiliarity with the properties in question refrained from voting. The Chairman thereupon declared the foregoing preambles and resolutions duly adopted.

The question of conveying all of the assets of Barker Bros. Inc., the California corporation, to this Corporation, and its dissolution consequent thereon, was then discussed. Whereupon the following resolution was presented and its adoption duly moved and seconded:

Resolved, that the officers of this Corporation be and they are hereby authorized, empowered and directed, in its name and for its account, to take or cause to be taken, all and whatever action this Corporation may take as a stockholder of Barker Bros. Inc., a California corporation, to the end that the oustanding preferred stock [100] of said California corporation shall be called for redemption on the earliest date on which the same may be redeemed, or to otherwise retire said stock by purchase or otherwise; to provide the California corporation with all funds requisite for such redemption or retirement to the extent that the funds therefor may not be available in the treasury of said California Corporation as and when required for such purpose; to cause said corporation to convey and transfer to this Corporation all of its property and assets, business and good-will, including cash on hand and in bank, subject to and with provision for the assumption by this Corporation of all of the debts, liabilities and obligations of said California corporation whether arising in tort, ex-contractu or otherwise, including in the event of the call for redemption of said preferred stock the obligation of said California corporation to pay the redemption price to the respective holders of said preferred stock; and upon such conveyance and transfer, or thereafter whenever it shall be convenient, to cause proper proceedings to be taken by said California corporation to effect its dissolution in the manner provided by law; and that said officers be and they are hereby authorized and

empowered to take or cause to be taken any and all such other action to make or cause to be made any and all such other payments, and to execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all such other instruments as may in their judgment be proper, convenient or necessary in order to carry out the intendment of [101] this resolution.

A vote was thereupon taken for or against the adoption of the foregoing resolution. Mr. Pinney and Mr. Benedict voted in favor of the adoption thereof. Mr. Brownback refrained from voting by reason of his unfamiliarity with the situation. The Chairman thereupon declared the foregoing resolution duly adopted.

No further business was presented and the meeting on motion adjourned.

HENRY F. PRINCE,
Secretary. [102]

Barker Bros. Incorporated
Special Meeting of Directors
Call and Waiver of Notice

We, the undersigned, being all of the Directors of Barker Bros. Incorporated, a corporation of the State of Delaware, do hereby call a special meeting of the Board of Directors thereof to be held on the 29th day of December, 1923, at 11:45 o'clock a.m. at 61 Broadway, New York City, for the purpose of considering and acting upon proposals for the issue of \$2,087,000 par value of First Preferred

Stock and \$2,393,500 par value of Second Preferred Stock of this Corporation in exchange for a like par value of the issued and outstanding Common Stock of this Corporation, and also for the purpose of authorizing the issue and sale of the remaining \$413,000 par value of First Preferred Stock of this Corporation, and for the transaction of any and all such other business as may come before the meeting in connection with the foregoing; of which meeting we hereby waive all requirements of notice of the time, place and objects thereof.

WARREN B. PINNEY,
HARRY E. BENEDICT,
GARRETT A. BROWNBACK.

Exhibit 11

Minutes of a Special Meeting of the Board of Directors of Lawrence Barker, Incorporated

The Board of Directors of Lawrence Barker, Incorporated, met at Room 1111 Merchants National Bank Building, in the City of Los Angeles, State of California, on the 29th day of December, 1923, at the hour of 10 o'clock A.M., pursuant to the following waiver of notice and consent signed by all of the Directors of said corporation, to wit:

Waiver of Notice and Consent

The undersigned directors of Lawrence Barker, Incorporated, do hereby consent to the holding of a meeting of the Board of Directors of said Corporation, at Room 1111, Merchants National Bank Build-

ing, in the City of Los Angeles, California, on the 29th day of December, 1923, at the hour of 10 o'clock A.M., for the purpose of considering and acting upon any and all business which may be brought before said meeting, and we do hereby waive any and all notice of such meeting.

Dated: December 29, 1923.

H. F. PRINCE,

JAS. A. GIBSON, JR.

Present: Directors Richard L. North and Jas. A. Gibson, Jr.

Absent: Director H. F. Prince.

In the absence of the President, Richard L. North, Vice-President, presided and Jas. A. Gibson, Jr., Secretary of the company, acted as Secretary. [104]

The Vice-President stated that there had been issued to this corporation in temporary form, certificates evidencing \$2,087,000.00 par value of the first preferred stock and \$2,300,000.00 par value of the second preferred stock of Barker Bros. Incorporated, a Delaware corporation; that Lawrence Barker of Los Angeles, California, had presented to the corporation his offer in writing to purchase of this corporation \$1,087,000.00 par value of the first preferred stock of said Barker Bros. Incorporated at the sum or price of \$1,000,040., and to secure the payment thereof to give to this corporation his promissory note for the said sum of \$1,000,040. payable on or before ninety (90) days from date, with interest at seven per cent per annum said note to be secured by said \$1,087,000. par value of said

preferred stock. There was also presented to the meeting a certain agreement between said C. H. Barker, Clarence A. Barker, Erle P. Barker and C. Lawrence Barker and Marshall Field, Glore, Ward & Company, Investment Bankers of New York and Chicago, under which, among other things, said C. H. Barker, Clarence A. Barker, Erle P. Barker and C. Lawrence Barker agreed to cause this corporation to be formed and organized for the purpose, among other things, to acquire and hold \$2,087,000. par value of the first preferred stock and \$2,300,000. par value of the second preferred stock of said Barker Bros. Incorporated, a Delaware corporation, and said Marshall Field, Glore, Ward & Company covenanted and agreed, under the terms of said agreement, to purchase of this corporation \$1,087,000. par value of first preferred stock of said Barker Bros. Incorporated, of Delaware, at the price therein stated, and to net this corporation, after deducting the agreed discount, \$1,000,040. in cash. [105]

It was further stated that said Lawrence Barker now offers to assume the obligation of this company to so sell and deliver \$1,087,000. par value of the first preferred stock of said Barker Bros. Incorporated, of Delaware, and that said Marshall Field, Glore, Ward & Company have consented thereto, said offer of said Lawrence Barker to this corporation being in words and figures following:

Los Angeles, California

December 29, 1923

Lawrence Barker, Incorporated,
Los Angeles, California.

Gentlemen:

I hereby offer to purchase of you \$1,087,000. par value of the first preferred capital stock of Barker Bros. Incorporated, a Delaware corporation, owned by you, for the sum or price of \$1,000,040., and in payment of same to deliver to you, upon the delivery to me of said stock, my promissory note for the sum of \$1,000,040., payable on or before ninety days from date, with interest at the rate of seven per cent per annum and to pledge with you as security for the payment of said note, said \$1,087,000. par value of said first preferred stock of Barker Bros. Incorporated.

If this offer is accepted by you, and upon delivery to me of said first preferred stock in the above amount, I will also agree to assume any obligation that this company may have under a certain agreement dated December 20th, 1923, between C. H. Barker, Clarence A. Barker, Erle P. Barker and C. Lawrence Barker and Marshall Field, Glore, Ward & Company to sell to said last named company \$1,087,000. par value [106] of first preferred stock of said Barker Bros. Incorporated, of Delaware, at 92, plus accrued dividends.

Please advise me at once if this offer is acceptable to you.

Yours very truly,

LAWRENCE BARKER.

Thereupon, there was read to the meeting said agreement of December 20th, 1923, between C. H. Barker, Clarence A. Barker, Erle P. Barker and C. Lawrence Barker, and said Marshall Field, Glore, Ward & Company, and same was, upon motion duly made, seconded and unanimously carried, approved and ordered filed with the Secretary.

Thereupon, upon motion duly made, seconded and unanimously carried, it was

Resolved: That this corporation does hereby ratify, confirm and approve the action of C. H. Barker, Clarence A. Barker, Erle P. Barker and C. Lawrence Barker in entering into said agreement of December 20th, 1923, with said Marshall Field, Glore, Ward and Company, and this corporation does hereby accept the offer of said Marshall Field, Glore, Ward & Company therein made to purchase of this company \$1,087,000. par value of the first preferred stock of said Barker Bros. Incorporated, of Delaware, now owned by this corporation, at 92 and accrued dividends, under the terms and conditions stated in said agreement; and

Be It Further Resolved: That it appearing to be for the best interests of this corporation, Marshall Field, Glore, Ward & Company consenting thereto, said offer of Lawrence Barker this day made to this corporation to purchase \$1,087,000. par value of the first preferred stock of said Barker Bros. Incorporated, of Delaware, for the sum or price of \$1,000,040. and to deliver in payment therefor to this corporation his promissory note payable on or [107] before ninety days from date, with interest

at the rate of seven per cent per annum, said note to be secured by said \$1,087,000. par value of said first preferred stock, be and the same is hereby accepted, and the President or Vice-President or Secretary of this corporation, or either of them, are hereby authorized and directed to deliver to said Lawrence Barker, or to his order, said \$1,087,000. par value of said preferred stock of said Barker Bros. Incorporated, of Delaware, upon delivery to this corporation of the promissory note of said Lawrence Barker, in the usual collateral form, said note to be for the sum and to bear interest and payable as hereinabove provided; provided, however, that the delivery to said Lawrence Barker of said \$1,087,000. par value of said preferred stock of said Barker Bros. Incorporated, of Delaware, shall be dependent upon said Lawrence Barker assuming any obligation that this corporation may have under said agreement dated December 20, 1923, between said C. H. Barker, Clarence A. Barker, Erle P. Barker and C. Lawrence Barker, and Marshall Field, Glore Ward & Company, to sell to said last named company \$1,087,000. par value of the first preferred stock of said Barker Bros. Incorporated, of Delaware, at 92, plus accrued dividends.

Whereupon, Mr. F. K. Colby was invited to attend the meeting and announced that he was authorized by C. Lawrence Barker to deliver, and he thereupon delivered to the Secretary of this corporation the promissory note of Lawrence Barker in words and figures following, to wit:

Los Angeles, California

\$1,000,040.00

December 29, 1923

On or before ninety (90) days after date, for value received, I promise to pay to Lawrence Barker, Incorporated, or order, at its office, in the City of Los [108] Angeles, California, One Million Forty and 00/100 Dollars, with interest from date at the rate of seven (7) per cent per annum until paid, and attorney's fees of ten per cent on the amount then unpaid if placed in the hands of an attorney for collection, or if suit be commenced or other proceedings be taken to enforce the payment of this note, or to sell any of the collateral securing same. Principal and interest payable in gold coin of the United States of America of the present standard. The makers, sureties, guarantors and endorsers of this note hereby consent to extensions of time at or after the maturity hereof, and hereby waive diligence, protest and demand and notice of every kind.

Lawrence Barker does hereby pledge to and deposit with Lawrence Barker, Incorporated, as collateral security for the payment of this note and of all of the obligations herein contained ten thousand eight hundred seventy (10,870) shares of first preferred stock of Barker Bros. Incorporated, evidenced by Certificate No. 12.

LAWRENCE BARKER.

(Revenue Stamps in amount of \$200.02 attached and cancelled.)

Mr. Colby thereupon delivered to the Secretary a communication from C. Lawrence Barker in words and figures following:

Los Angeles, California

December 29, 1923.

Lawrence Barker, Incorporated,
Los Angeles, California.

Gentlemen:

I hand you herewith my promissory note in favor of your company in the sum of \$1,000,040., in accordance with my written offer of this date, and in payment of \$1,087,000. par value of the first preferred stock of Barker Bros. Incorporated, a Delaware corporation. In consideration of the delivery to me of said stock, receipt whereof I hereby acknowledge, I agree to and do hereby assume any obligation that your company may have under a certain agreement dated December 20th, 1923, between C. H. Barker, Clarence A. Barker, Erle P. Barker and C. Lawrence Barker and Marshall Field, Glore, Ward & Company to sell said last named company \$1,087,000 par value of first preferred stock of said Barker Bros. Incorporated, of Delaware, at 92, plus accrued dividends.

Yours very truly,

LAWRENCE BARKER.

'There being no further business to come before the meeting, it was, upon motion duly made, seconded and unanimously carried, adjourned.

JAS. A. GIBSON, JR.

Secretary. [110]

Exhibit 12

Barker Bros. Incorporated
Special Meeting of the Board of Directors

A special meeting of the Board of Directors was held at 61 Broadway, New York, N. Y., on the 3rd day of January, 1924, at 11 o'clock A.M.

There were present: Messrs. Warren B. Pinney and Harry E. Benedict, being a majority of the Board of Directors and therefore a quorum.

Mr. Pinney, the President, called the meeting to order and presided. Mr. Henry F. Prince, the Secretary, acted as Secretary of the meeting and kept the minutes.

The Secretary presented a Waiver of Notice signed by all the Directors, which was ordered filed with the minutes of the meeting.

The President stated that the meeting was called for the purpose of considering the advisability of changing the Common Stock from shares of the par value of One Hundred Dollars (\$100) each to shares without par value, and by making provision for the issue of such Common Stock without par value in exchange pro rata, for the outstanding shares having a par value of One Hundred Dollars (\$100) per share.

After a full discussion, upon motion, duly made, seconded and carried, it was unanimously

Resolved that the certificate of incorporation of said Barker Bros. Incorporated be amended by striking out all of the first paragraph of the article

thereof numbered "Fourth" and by inserting in lieu thereof the following:

Fourth: The total authorized capital stock of this corporation is Five Million Dollars (\$5,000,000) of [111] Preferred stock divided into:

Twenty-five thousand (25,000) shares of par value of One Hundred Dollars (\$100.00) each of First Preferred Stock;

Twenty-five thousand (25,000) shares of par value of One Hundred Dollars (\$100.00) each of Second Preferred Stock; and

One hundred thousand (100,000) shares of common stock without nominal or par value.

Said one hundred thousand (100,000) shares of common stock without nominal or par value shall be issued by the corporation in exchange, pro rata, for the outstanding common stock of the corporation of the par value of One Hundred Dollars (\$100) per share of which \$5,089,200 in aggregate par value only is issued and outstanding.

that said amendment is advisable and a special meeting of the stockholders of this Corporation is hereby called to be held at 61 Broadway, New York, N. Y., on the 3rd day of January, 1924, at 2 o'clock in the afternoon to take action upon the foregoing resolution; and be it

Further Resolved that the proper officers of this corporation, if the stockholders approve, be and hereby are authorized to file the necessary certificate with the Secretary of State of Delaware to

effect the change in the Certificate of Incorporation; and be it

Further Resolved, that in the event of such approval the proper officers of this Corporation be and they are hereby authorized, empowered and directed to issue certificates for the entire one hundred thousand (100,000) shares of Common Stock without nominal or par value, [112] provided for in said proposed amendment in exchange, pro rata, and upon the surrender and cancellation of, the certificates for the outstanding Common Stock of the corporation having a par value of One Hundred Dollars (\$100) per share, as authorized in and by said proposed amendment.

Upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

Whereas there is still remaining in the Treasury of this corporation, unissued, \$413,000.00 par value of First Preferred Stock of this corporation,

And Whereas it is deemed advisable for the best interests of this corporation to sell and dispose of all of said First Preferred Stock,

And Whereas Marshall Field, Glore, Ward & Co., Bankers, have heretofore agreed to purchase all of said stock at 92% of the par value thereof,

Now Therefore, Be It Resolved: That the proper officers of this corporation be, and they have hereby, authorized, empowered and directed, in its name and for its account, to sell, issue and deliver unto Marshall Field, Glore, Ward & Co., of New York and Chicago, or order, all of the unissued First

Preferred capital stock of this corporation, not exceeding the total sum of \$413,000.00 par value, upon the payment to this corporation, or its order, of \$379,960.00, being 92% of the par value of said stock.

Be It Further Resolved: That the proper officers of this corporation be, and they are hereby, authorized, empowered and directed, in its name and for its account, to take any and all such action, and/or to execute, acknowledge and deliver all such instruments as may be necessary, proper or convenient in their judgment in order to carry out the [113] intent of this resolution.

The Chairman then presented the written resignation of Mr. Brownback as a Director of this Corporation to take effect upon the pleasure of this Board of Directors; whereupon, upon motion duly made and seconded, and by the affirmative vote of all the Directors, the following resolution was duly adopted:

Resolved: That the resignation of Mr. Brownback as a Director of this Corporation be and the same is hereby accepted; and that Mr. Elvon Musick be and he is hereby elected to fill the vacancy thus created, and to serve until the election and qualification of his successor.

The Secretary was directed to file Mr. Brownback's resignation with the minutes of the meeting.

The Chairman then called the attention of the Board to Article XII of the By-Laws of the Corporation authorizing the Board of Directors to increase the number thereof from three to nine and

to elect the additional Directors, the same to serve until the election and qualification of their respective successors. Whereupon, the following resolutions were upon motion duly made and seconded, and by the affirmative vote of all the Directors present, duly adopted:

Resolved: That in exercise of the power conferred by Article XII of the By-Laws of this Corporation upon this Board of Directors, the number of Directors thereof be and the same is hereby increased from three to nine; and be it

Further Resolved: That the following persons be and they are hereby elected Directors of this Corporation to serve until the election and qualification of their respective successors: H. S. McKee, C. H. Barker, C. A. Barker, C. Lawrence Barker, Erle P. Barker and F. K. Colby.

No further business was presented and the meeting on motion adjourned.

HENRY F. PRINCE,
Secretary. [114]

Exhibit 13

Minutes of a Special Meeting of the Board of Directors of Lawrence Barker, Incorporated

The Board of Directors of Lawrence Barker, Incorporated, met at Room 1111, Merchants National Bank Building, in the City of Los Angeles, State of California, on the 10th day of February, 1924, at the hour of 11 o'clock A.M., pursuant to the following

waiver of notice and consent signed by all of the Directors of said corporation, to wit:

Waiver of Notice and Consent

The undersigned Directors of Lawrence Barker, Incorporated, do hereby consent to the holding of a special meeting of the Board of Directors of said corporation at Room 1111, Merchants National Bank Building, in the City of Los Angeles, California, on the 10th day of February, 1924, at the hour of 11 o'clock A.M., for the purpose of considering and acting upon any and all business which may be brought before said meeting, and we do hereby waive any and all notice of such meeting.

Dated February 10, 1924.

PAULINE BARKER,

LAWRENCE BARKER,

F. K. COLBY.

Present: Directors Lawrence Barker and F. K. Colby.

Absent: Pauline Barker.

The meeting was called to order by the President, Lawrence Barker, who presided, and F. K. Colby, Secretary of the [115] Company, acted as Secretary.

The President stated that notification had been received from Marshall Field, Glore, Ward & Company that on the 11th day of February, 1924, said company desired to exercise its option to purchase of this corporation 2500 shares of the first preferred capital stock of Barker Bros. Incorporated, a Dela-

ware corporation, at 92 per cent of the par value thereof, plus accrued dividends to said February 11, 1924, and that proper arrangements had been made with Security Trust & Savings Bank for the payment through that bank to this corporation of the said purchase price for said stock. The President further stated that the foregoing is all in accordance with the option heretofore granted by this corporation to said Marshall Field, Glore, Ward & Company, and he therefore recommended that the transaction be completed and the stock delivered to said bank for delivery to said Marshall Field, Glore, Ward & Company upon the payment of said agreed purchase price.

The President further stated that an agreement had been made whereby this corporation was to exchange an additional 4130 shares of said first preferred stock of Barker Bros., Incorporated, for a like number of shares of said first preferred stock upon payment to this corporation of a sum in cash equal to dividends accrued on 4130 shares of said first preferred stock at the rate of $7\frac{1}{2}$ per cent per annum from January 1, 1924, to the date such exchange is effected.

Thereupon, upon motion duly made, seconded and unanimously carried, it was

Resolved: That this corporation hereby sell and transfer to Marshall Field, Glore, Ward & Company 2500 shares of the first preferred capital stock of Barker Bros., Incorporated, a Delaware corporation, at the price of 92 per cent of the par value

thereof plus accrued [116] dividends to February 11, 1924, and upon payment to this corporation in addition of a sum equal to 8 per cent of the par value of said stock; and

Be It Further Resolved: That this corporation further exchange an additional 4130 shares of said first preferred capital stock of Barker Bros., Incorporated, a Delaware corporation, for a like number of shares of said preferred stock and the payment to this corporation of a sum in cash equal to dividends accrued on 4130 shares of said first preferred capital stock at the rate of $7\frac{1}{2}$ per cent per annum from January 1, 1924, to the date such exchange is effected; and

Be It Further Resolved: That the President and/or Secretary of this corporation be and they are hereby authorized, empowered and directed, in behalf of this corporation, to assign, transfer and deliver said first preferred capital stock to Marshall Field, Glore, Ward & Company, or to its order, upon payment to this corporation of the above-recited consideration, and to sign all papers and do all things necessary on behalf of this corporation to accomplish the purposes of the foregoing resolutions.

The Secretary of the corporation thereupon stated that the President of this corporation desires to pay in full the promissory note heretofore given by him in favor of this corporation, under date of December 29, 1923, for the principal sum of \$1,040,000.00,

a copy of said note being set forth at length upon page 33 of this Minute Book.

Whereupon, upon motion duly made, seconded and unanimously carried, it was [117]

Resolved: That upon payment to this corporation by Lawrence Barker of the sum of \$1,040,000.00, together with interest thereon at the rate of seven per cent per annum from December 29, 1923, this corporation cancel and deliver to said Lawrence Barker said promissory note for the said principal sum, heretofore made and delivered to this corporation, dated December 29, 1923.

The President stated that the corporation had engaged offices at No. 1116 I. N. Van Nuys Building, at the southwest corner of Seventh and Spring Streets, Los Angeles, California, and that it is deemed to be for the best interests of the corporation to move the business office of this corporation from 1111 Merchants National Bank Building to said I. N. Van Nuys Building.

Thereupon, upon motion duly made, seconded and unanimously carried, it was

Resolved: That from and after the date of this meeting, and unless and until otherwise ordered by the Board of Directors, the office of this corporation shall be at No. 1116 I. N. Van Nuys Building, at the southwest corner of Seventh and Springs Streets, in the City of Los Angeles, State of California.

There being no further business to come before

the meeting, it was, upon motion duly made, seconded and unanimously carried, adjourned.

F. K. COLBY,
Secretary.

February 20-24

No quorum on the above date.

F. K. COLBY,
Secty. [118]

Exhibit 14

Minutes of Meeting of Board of Directors of Lawrence Barker Incorporated

February 27, 1924.

Meeting of the Board of Directors of Lawrence Barker Incorporated, the 27th day of February, at the office of the corporation, 1116 Van Nuys Building, at the hour of 11:00 a.m., pursuant to waiver of notice and consent signed by all of the Directors of said corporation.

Directors present being Lawrence Barker and F. K. Colby, absent, Pauline Barker, meeting was called to order by the President, Lawrence Barker, who presided, and F. K. Colby, Secretary of the company acted as Secretary. The President stated that notification had been received from Marshall Field, Glore, Ward & Co. that on the 28th day of February, 1924, said company desired to exercise its option to purchase from this corporation twenty-five hundred (2500) shares of the First Preferred Capital stock of Barker Bros. Incorporated, price for said shares of capital stock being at par plus

accrued dividends to date of sale, and that said Marshall Field, Glore, Ward & Co. had made arrangements with the Security Trust and Savings Bank for the payment of 92% of the par value thereof of said stock plus accrued dividends to date of sale and had made arrangements with Barker Bros. Incorporated for the payment of the remaining 8% of the par value thereof of said stock.

The President also stated that the foregoing is all in accordance with the option heretofore granted to said Marshall Field, Glore, Ward & Co., and he therefore recommended that the transaction be completed and the stock delivered to said bank, namely, Security Trust & Savings Bank of Los Angeles, California, for delivery to said Marshall Field, Glore, Ward & Co., upon payment of said agreed purchase price, and in the manner as stated. Thereupon, upon motion duly made and unanimously carried, be it resolved that this corporation hereby sells and transfers to Marshall Field, Glore, Ward & Co., twenty-five hundred shares (2500) of the First Preferred Capital Stock of Barker Bros., Incorporated, plus accrued dividends to February 28th; and it was further resolved that the President and/or Secretary of this corporation be, and they are hereby authorized, empowered and directed, in behalf of this corporation to assign, transfer and deliver said Preferred Capital Stock to Marshall Field, Glore, Ward & Co., or to its order and to sign all papers and do all things necessary on behalf of this corporation to accomplish the purpose of the foregoing resolution.

The President then called to the attention of the Board that an error had been made in the first and last paragraph of resolution pertaining to the sale of Barker Bros. Incorporated capital stock to Marshall Field, Glore, Ward & Co. Upon motion duly made and unanimously carried, it was resolved that the first and last paragraph of resolution of February 10th on pages 43 and 44, of the minute book of this corporation, be amended to read as follows: "Now, Therefore, be it

Resolved that this corporation hereby sells, and transfers to Marshall Field, Glore, Ward & Co., twenty-five hundred shares (2500) of the First Preferred Capital Stock of Barker Bros. Incorporated, plus accrued dividends to February 11th; and it was further

Resolved that the President and/or Secretary of this corporation be, and they are hereby authorized, empowered and directed, in behalf of this corporation to assign, transfer and deliver said Preferred Capital Stock to Marshall Field, Glore, Ward & Co., or to its order and to sign all papers and do all things necessary on behalf of this corporation to accomplish the purpose of the foregoing resolution."

There being no further business to come before the meeting, it was, upon motion duly made, seconded and carried, adjourned.

F. K. COLBY,
Secretary.

Lawrence Barker, Incorporated Meeting of
Directors Call and Waiver of Notice

We, the undersigned, being all of the Directors of Lawrence Barker, Incorporated, a corporation of the State of California, do hereby call a Special Meeting of the Board of Directors thereof to be held on the 27th day of February, 1924, at 11:00 o'clock a.m. at the office of the corporation for the purpose of authorizing sale of twenty-five hundred (2500) shares of the First Preferred Capital Stock of Barker Brothers, Incorporated, to Marshall Field, Glore, Ward & Company, of Chicago, Illinois, and for the transaction of any and all such other business as may come before the meeting in connection with the foregoing; of which meeting we hereby waive all requirements of notice of the time, place and objects thereof.

/s/ LAWRENCE BARKER,
/s/ PAULINE BARKER,
/s/ F. K. COLBY.

Exhibit 15

Lawrence Barker, Inc.

Earned Surplus Per Books

December

31

1923	_____
1924	\$ 68,404.29
1925	214,744.01
1926	298,393.60
1927	409,592.99
1928	107,675.72
1929	237,876.03

1930	.....	49,148.83
1931	.....	48,219.89
1932	.....	95,375.92
1933	.....	73,696.04
1934	.....	24,968.36
1935	.....	52,201.83
1936	.....	38,720.06
1937	.....	82,066.12
1938	.....	63,472.45
1939	.....	60,397.81
1940	.....	115,888.57
1941	.....	185,796.91
1942	.....	214,896.63
1943	.....	264,380.50

[*Figures opposite years, 1935 to 1943, inclusive, appear in red on original.] [123]

Exhibit 16

Lawrence Barker, Inc.

Schedule of Stock Issued and Transferred

Ctf. No.	No. of Shares	Name of Stockholder	Cancelled & Replaced by Ctf. No.	Date of Issuance
1 Temp.	1	H. F. Prince	1	12/26/23
2 Temp.	1	Richard L. North	2	12/26/23
3 Temp.	1	Jas. A. Gibson, Jr.	3	12/26/23
4 Temp.	4504.13	C. Lawrence Barker	4	12/26/23
5 Temp.	4062.24	Pauline Barker	5	12/26/23
6 Temp.	2350.23	C. L. Barker, Trustee	6	12/26/23
7 Temp.	8353.66	Chas. Lawrence Barker, Exeutor	7	12/26/23
8 Temp.	726.73	F. K. Colby, Trustee	8	12/26/23
1	1	H. F. Prince	9	1/28/24
2	1	Richard L. North	10	1/28/24
3	1	Jas. A. Gibson, Jr.	11	1/28/24
4	4304.13	C. Lawrence Barker	15,16,17,18	1/28/24
5	4062.24	Pauline Barker	12,13,14	1/28/24

Ctf. No.	No. of Shares	Name of Stockholder	Cancelled & Replaced by Ctf. No.	Date of Issuance
6	2350.23	C. L. Barker, Trustee	27	1/28/24
7	8353.69	Chas. Lawrence Barker, Executor	22,23	1/28/24
8	726.73	F. K. Colby, Trustee	31	1/28/24
9	1	Lawrence Barker		1/28/24
10	1	Pauline Barker	42	1/28/24
11	1	F. K. Colby	29	1/28/24
12	114	Frank Berman	38	1/30/25
13	114	Harry Berman	35	1/30/25
14	3834.24	Pauline Barker	19,20,21	1/30/25
15	67.09	F. K. Colby, Trustee	32	6/30/25
16	67.09	F. K. Colby, Trustee	34	6/30/25
17	67.09	F. K. Colby, Trustee	33	6/30/25
18	4302.86	C. Lawrence Barker		6/30/25
19	110	Harry Berman	37	1/20/26
20	110	Frank Berman	39	1/20/26
21	3614.24	Pauline Barker	42	1/20/26
22	4176.84	Pauline Barker	24,25,26	6/ 8/26
23	4176.83	C. Lawrence Barker	44,45	6/ 8/26
24	224	Harry Berman	36	3/11/27
25	224	Frank Berman	40	3/11/27
26	3728.84	Pauline B. Barker	42	3/11/27
27	2350.23	Frank K. Colby, Trustee	30	2/23/31
28	---	Cancelled—Not Issued	---	---
29	1	Philip R. Johnson		12/12/34
30	2350.23	Lawrence Barker, Trustee	46,47,48	1/ 4/35
31	726.73	Horace Wilson, Trustee	41	1/ 4/35
32	67.09	Horace Wilson, Trustee	41	1/ 4/35
33	67.09	Horace Wilson, Trustee	41	1/ 4/35
34	67.09	Horace Wilson, Trustee	41	1/ 4/35
35	114	Pauline Barker	42	6/10/36
36	224	Pauline Barker	42	6/10/36
37	110	Pauline B. Barker	42	6/10/36
38	114	Pauline B. Barker	42	7/30/37
39	110	Pauline B. Barker	42	7/30/37
40	224	Pauline B. Barker	42	7/30/37
41	928	Horace S. Wilson & Philip R. Johnson, Trustees	46,47,48	10/15/37

Ctf. No.	No. of Shares	Name of Stockholder	Cancelled & Replaced by Ctf. No.	Date of Issuance
42	8240.08	Lawrence Barker, Sr., and Pauline B. Barker as Trus- tees by virtue of trust in- denture dated January 19, 1942, designating Pauline B. Barker as Trustor and Lawrence Barker, Sr., as trustee.	43	5/ 2/42
43	8240.08	Pauline B. Barker	49,50	11/12/42
44	31	Lawrence Barker	Retired in Liquidation	12/30/42
45	4145.83	Lawrence Barker	51,52	12/30/42
46	1092.75	Elizabeth Barker Forbes Derby		3/30/43
47	1092.74	William A. Barker, II.		3/30/43
48	1092.74	Lawrence Barker, Jr.		3/30/43
49	8210.08	Pauline B. Barker		12/28/43
50	30	Pauline B. Barker	Retired in Liquidation	12/28/43
51	4115.83	Lawrence Barker		12/28/43
52	30	Lawrence Barker	Retired in Liquidation	12/28/43

[Endorsed]: Filed November 14, 1949.

[Title of District Court and Cause.]

STIPULATION AND ORDER FOR CORREC- TION OF STIPULATION OF FACTS

It Is Hereby Stipulated and Agreed by and between counsel for the plaintiff and defendant that subject to the approval of the Court the Stipulation of Facts filed in the above-entitled consolidated actions on November 14, 1949, may be changed and corrected as follows:

(1) Commencing with the words "in exchange" at the end of line 6 on page 17 of said Stipulation, delete the words, "in exchange for the transfer by

the Lawrence Barker interests to L. B. Inc. of 8179.69 shares of common stock of Barkers, California, all''

The defendant does not desire to stipulate the legal effect of the various transfers mentioned in the preceding parts of said Stipulation of Facts.

It is agreed that the foregoing change to the Stipulation of Facts is in no way to be deemed an admission by the plaintiffs that the language deleted is not true.

Dated: This 13th day of January, 1950.

ERNEST A. TOLIN,
United States Attorney,

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant United States
Attorneys.

EUGENE HARPOLE, and
JAMES D. PETTUS,
Special Attorneys, Bureau of
Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for Defendant.

IRELL & MANELLA,

By /s/ ARTHUR MANELLA,
Attorneys for Plaintiffs.

It Is So Ordered This 17th day of January, 1950.

/s/ BEN HARRISON,
United States District Judge.

[Endorsed]: Filed January 18, 1950.

In the District Court of the United States Southern
District of California, Central Division
No. 9621-BH

LAWRENCE BARKER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 9620-BH

MRS. W. A. BARKER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant,

MEMORANDUM OPINION

In the above-entitled consolidated actions, plaintiffs each seek recovery of overpayment of income taxes for the year 1943. These actions arise over the sale by each of 30 shares of the common stock of Lawrence Barker, Inc.

The amounts involved do not justify the expense and work devoted to these two cases, unless it is a test case to establish a rule and guide in the disposition of future sales of the same stock.

An over-simplification of the facts reveals that the Lawrence Barker interests held certain stock in Barker Bros. of California, the California corpora-

tion reorganized under the laws of Delaware. Instead of the Lawrence Barker Interests having the Delaware corporation deliver to them their proportionate shares, they caused them to be delivered to Lawrence Barker, Inc. The formation of Lawrence Barker, Inc. was for the specific purpose of holding said stock. I look upon the transaction as a simple transfer of stocks in Barker Bros. of Delaware to a holding company for the Lawrence Barker Interests. While the stock of Barker Bros. of Delaware was never directly delivered to the original owners personally, it was on their direction delivered to Lawrence Barker, Inc.

Plaintiff states the question involved is whether the 1923 transactions, whereby the Lawrence Barker Interests received Lawrence Barker, Inc. stock, was a taxable transaction. If it was a taxable transaction plaintiffs are entitled to prevail.

If I look to substance rather than form, Lawrence Barker, Inc. acquired stock belonging to Lawrence Barker Interests as a holding corporation for the various parties grouped into the Lawrence Barker Interests. The corporate entity was in substance and in fact the same as the Lawrence Barker Interests.

I agree with counsel for defendant when they quote Mr. Justice Frankfurter saying: "A given result at the end of a straight path," this court said in *Minnesota Tea v. Helvering*, 302 U.S. 609, 613, "is not made a different result because reached by following a devious path." (*Griffith v. Commissioner*, 308 U. S. 355).

While counsel both give lip service to the above quotation, they proceed through lengthy and wordy briefs citing authorities galore, to discuss the form rather than the substance of the case. Studying the authorities cited one appreciates the statement in Mertens, Vol. 3, p. 331, where the author said: "As stated before, reconciliation of the decided cases is impossible and a recital of the pros and cons would bring the exhausted reader back to where he and the author started." To me it was like going through a terrible nightmare.

My conclusions are based upon the substance of the transactions. I cannot see where any tax liability was created by the Lawrence Barker Interests by transferring their interests in Barker Bros. of Delaware to Lawrence Barker, Inc.

Defendant is entitled to a judgment. It is my understanding the amounts involved will be stipulated by the parties. Counsel for defendant is directed to prepare the proposed findings and judgment.

Dated: This 24th day of May, 1950.

/s/ BEN HARRISON,
Judge.

[Endorsed]: Filed May 24, 1950.

[Title of District Court and Cause.]

No. 9621-BH

OBJECTIONS TO DEFENDANT'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS
OF LAW

Comes now the plaintiff above named, and objects to the above named defendant's proposed Findings of Fact and Conclusions of Law, upon the following grounds:

1. All of the pertinent facts in the above-entitled case were stipulated to by and between plaintiff and defendant in a "Stipulation of Facts" filed with this Court.

2. Defendant's proposed Findings of Fact are incomplete in that they omit entirely, and fail to find as facts, all of the facts stipulated by and between the parties and agreed to by and between plaintiff and defendant to be material and relevant herein, as set forth in paragraphs V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of the aforementioned Stipulation of Facts.

3. Defendant's proposed Findings of Fact are incomplete in that they omit entirely, and fail to find as facts, all of the facts stipulated by and between the parties, although objected to by defendant during the course of trial as immaterial, as set forth in paragraphs IV, XVI, XVII, XVIII, XIX (lines 7 to 9 on page 10), XX, XXI, XXII, XXIII, XXIV, XXV, XXVI and XXVII of the aforementioned Stipulation of Facts.

4. Defendant's proposed Findings of Fact are incomplete in that they omit entirely, and fail to find as a fact, that on March 15, 1944, plaintiff filed his federal income tax return for the calendar year 1943, with the Collector of Internal Revenue for the Sixth District of California, and paid to such Collector, shown on plaintiff's return; that plaintiff included on or before March 15, 1944, the entire tax liability in his 1943 return, as income from capital gain, the entire amount of \$5,000.00 received by him as the sales price of his 30 shares of the common stock of Lawrence Barker, Incorporated, referred to in defendant's proposed Finding No. VIII (see allegation in plaintiff's Complaint, paragraph 7, admitted by defendant).

Dated: September 5, 1950.

IRELL & MANELLA,

By /s/ ARTHUR MANELLA,

Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed October 4, 1950.

[Title of District Court and Cause.]

No. 9621-BH

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above-entitled case came on regularly for trial before the Court sitting without a jury at Los Angeles, California, on the 14th day of November, 1949, the Honorable Ben Harrison, Judge, presiding; the

plaintiff appeared by Lawrence Irell and Arthur Manella, his attorneys: the defendant appeared by Ernest A. Tolin, United States Attorney for the Southern District of California; E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, its attorneys; evidence consisting of a written Stipulation of Facts was introduced and briefs thereafter submitted on behalf of the respective parties; the Court having considered the evidence, the briefs submitted and heretofore formulated its opinion now makes the following:

Findings of Fact

I.

Lawrence Barker, one of the plaintiffs herein, and Charles Lawrence Barker, C. Lawrence Barker and C. L. Barker are one and the same person.

II.

On October 19, 1923, and up to and including December 28, 1923, Barker Bros., Inc. was a California corporation, engaged in the business of selling furniture and house furnishings. Its outstanding capital stock consisted of 5,750 shares of voting preferred stock, having a total par value of \$575,000, and 17,894.35 shares of common stock, having a total par value of \$1,789,435.

III.

On October 19, 1923, and up to and including December 28, 1923, the common stock of Barker Bros., Inc. of California was owned as follows:

Stockholder	No. of Shares
Charles Lawrence Barker, as Executor of the Estate of W. A. Barker, deceased.....	3,418.19
Pauline Barker.....	1,660
Lawrence Barker, individually.....	1,841.50
F. K. Colby, Trustee.....	300
Lawrence Barker, Trustee.....	960
C. H. Barker	}.....8,187.69
C. A. Barker	
Erle P. Barker	
J. W. Beam, Trustee for certain employees of Barker California.....	1,526.97
Total	17,894.35

IV.

Prior to December 28, 1923, the cost or other basis for determining gain or loss on the sale or disposition of the shares of stock of Barker Bros., Inc. of California in the hands of the following stockholders of L. B., Inc., was:

Stockholder	No. of Shares	Basis
Estate of W. A. Barker	3,368.19	\$753,598.84
Estate of W. A. Barker	50	9,239.85
Pauline Barker	1,660	163,577.19
Lawrence Barker	1,841.50	235,031.57
Pauline Barker	1,660	163,577.19
Lawrence Barker	1,841.50	235,031.57
Lawrence Barker, Trustee	960	126,345.26
F. K. Colby, Trustee	300	38,289.15
		<hr/> \$1,326,081.86

V.

On December 28, 1923, a corporation was organized under the laws of Delaware and also known as Barker Bros., Inc.

VI.

On December 28, 1923, the holders of all the common stock of Barker Bros., Inc. of California agreed to and did exchange all of the shares of its common stock for all of the shares of the common stock of the newly organized corporation (Barker Bros., Inc. of Delaware), and were in control of the latter corporation immediately following the exchange with the same proportionate stock interests that they had previously held in the California corporation.

VII.

On December 22, 1923, a corporation known as Lawrence Barker, Incorporated, had been organized under the laws of the State of California by the plaintiff and a group of the holders of common stock in Barker Bros., Inc. of California, who had associated themselves with him. The persons in this group directed that the shares of common stock in Barker Bros., Inc. of Delaware, to which they were entitled, be issued not in their names but in the name of Lawrence Barker, Incorporated. This direction was carried out and Lawrence Barker, Incorporated, received the shares of common stock in Barker Bros., Inc. of Delaware, to which plaintiff and his associates were entitled in exchange for all of its own common stock which was, on December 28, 1923, issued to plaintiff and his said associates

in the same proportions that they were entitled to receive stock in Barker Bros., Inc. of Delaware. Plaintiff and his associates were in control of Lawrence Barker, Incorporated immediately after this exchange.

VIII.

On December 30, 1943, Lawrence Barker, the plaintiff herein, sold thirty shares of the common stock of Lawrence Barker, Inc. which he had acquired by the exchange set out above in Finding No. VII for the sum of \$5,000.00.

On March 15, 1944, Lawrence Barker, plaintiff herein, filed his income tax return for the calendar year 1943 with the Collector of Internal Revenue for the Sixth Collection District of California and paid to such Collector on or before March 15, 1944, the entire tax liability shown on said return. The plaintiff included in his said 1943 tax return as income from capital gain the entire amount of \$5,000.00 received by him as the sales price of his thirty shares of the common stock of Lawrence Barker, Inc. as previously mentioned herein.

From the foregoing Findings of Fact the Court draws the following:

Conclusions of Law

I.

That the transactions whereby plaintiff exchanged the shares of common stock in Barker Bros., Inc. of California, which he originally owned, for common stock in Barker Bros., Inc. of Delaware and then exchanged his common stock in the

latter corporation, or his right to receive that common stock for common stock in Lawrence Barker, Incorporated, did not give rise to a gain or loss that may be recognized for federal income tax purposes within the meaning of Sections 112(b)(5) and 113(a)(6) of the Revenue Act of 1934.

II.

The thirty shares of the common stock of Lawrence Barker, Incorporated, which the plaintiff, Lawrence Barker sold on December 30, 1943, had a cost or other basis for determining gain or loss upon their sale or disposition of \$52.18 per share and plaintiff realized a capital gain of \$3,434.60 when he sold said thirty shares for \$5,000.00 on December 30, 1943.

III.

That plaintiff overpaid his federal income tax for the taxable year 1943 in the sum of \$434.61 with interest thereon as provided by law from the 15th day of March, 1944, and is entitled to have said amount refunded.

IV.

That the plaintiff is entitled to judgment against defendant for the sum of \$434.61 with interest thereon at the rate of 6% per annum from the 15th day of March, 1944, until a date preceding the issuance of a refund check by the Commissioner of Internal Revenue by not more than thirty days, and

for plaintiff's costs to be taxed by the Clerk of this Court.

Dated: This 24th day of Oct., 1950.

/s/ BEN HARRISON,
United States District Judge.

Approved as to Form, but Objections Filed September 6, 1950.

IRELL & MANELLA,
By /s/ ARTHUR MANELLA,
Attorneys for Plaintiff.

[Endorsed]: Filed October 24, 1950.

The United States District Court, Southern District
of California, Central Division
No. 9621-BH

LAWRENCE BARKER,

Plaintiff,

vs.
THE UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

The above-entitled case came on regularly for trial before the Court sitting without a jury at Los Angeles, California, on the 14th day of November, 1949, the Honorable Ben Harrison, Judge, presiding; the plaintiff appeared by Lawrence Irell and Arthur Manella, his attorneys; the defendant appeared by Ernest A. Tolin, United States Attorney

for the Southern District of California; E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, its attorneys; the Court having considered the evidence, rendered its opinion and made and filed herein its Findings of Fact and Conclusions of Law.

Now, Therefore, It Is Ordered, Adjudged and Decreed:

That the plaintiff Lawrence Barker have judgment against the defendant United States of America for the sum of \$434.61 with interest thereon at the rate of six per cent per annum from the 15th day of March, 1944, until a date preceding the issuance of a refund check by Commissioner of Internal Revenue by not more than 30 days; and for plaintiff's costs taxed in the sum of \$.

Dated: This 24th day of Oct., 1950.

/s/ BEN HARRISON,
United States District Judge.

Approved As To Form:

IRELL & MANELLA,

By /s/ ARTHUR MANELLA,
Attorneys for Plaintiff.

Judgment entered Oct. 24, 1950.

[Endorsed]: Filed October 24, 1950.

[Title of District Court and Cause.]

No. 9621-BH

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS PURSUANT TO RULE
73(b), FEDERAL RULES OF CIVIL PRO-
CEDURE

Notice Is Hereby Given that Lawrence Barker, plaintiff-appellant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final Judgment entered in the above-entitled case, which was in favor of plaintiff and against the defendant, but only to the extent of directing that plaintiff have judgment against defendant for the sum of \$434.61 with interest thereon at the rate of six per cent per annum from the 15th day of March, 1944, which Judgment was rendered on October 24, 1950.

Dated this 18th day of December, 1950.

IRELL & MANELLA,
LAWRENCE E. IRELL, and
ARTHUR MANELLA,

By /s/ ARTHUR MANELLA,
Attorneys for Plaintiff-
Appellant.

Receipt of Copy Acknowledged.

[Endorsed]: Filed December 18, 1950.

[Title of District Court and Cause]

No. 9621-BH

CASH DEPOSIT ON APPEAL

Plaintiff-appellant Lawrence Baker, by and through his attorneys Irell & Manella, Lawrence E. Irell and Arthur Manella, herewith submits a cash deposit in lieu of bond in connection with his Notice of Appeal this day filed in the above-entitled action.

This deposit, in the form of a cashier's check made payable to the Clerk of the United States District Court, is made pursuant to Rule 73(c) of the Federal Rules of Civil Procedure and in accordance with Section 8 (e) of the Rules of the District Court of the United States for the Southern District of California.

The funds used for the purpose of securing the cashier's check are owned by Lawrence Barker, plaintiff-appellant. Said fund is hereby subjected to the provisions of Section 8(c) of the Rules of the District Court of the United States for the Southern District of California, entitled "Summary Judgment Against [144] Sureties."

Dated this 18th day of December, 1950.

IRELL & MANELLA,
LAWRENCE E. IRELL, and
ARTHUR MANELLA,

By /s/ ARTHUR MANELLA,
Attorneys for Plaintiff-
Appellant.

State of California,
County of Los Angeles—ss.

On this 18th day of December, 1950, before me, the undersigned Notary Public in and for said County and State, personally appeared Arthur Manella, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

Witness my hand and official seal.

[Seal] /s/ AUGUSTA GROBE,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Dec. 4, 1953.

[Endorsed]: Filed December 18, 1950. [145]

In the United States District Court
Southern District of California
Central Division

No 9620-BH-Civil

MRS. W. A. BARKER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA

Defendant.

No. 9621-BH-Civil

LAWRENCE BARKER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA

Defendant.

Honorable Ben Harrison, Judge Presiding

Appearances:

For the Plaintiffs:

MESSRS. BERGER & IRELL;
ARTHUR MANELLA, Esq.; By
ARTHUR MANELLA, Esq.

For the Defendant:

E. H. MITCHELL,
EDWARD R. McHALE,
Assistant U. S. Attorneys;
ROBT. D. SCOTT, and
JAMES D. PETTUS,
Spec. Attorneys Bureau of
Internal Revenue, By
EUGENE HARPOLD, Esq.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California, November 14, 1949

The Court: You may proceed.

The Clerk: 9620 and 9621, Mrs W. A. Barker
and Lawrence Barker against the United States of
America.

Mr. Manella: Ready for the plaintiff, your
Honor.

Mr. Harpold: We are ready, your Honor.

The Court: Do you have a complete stipulation
of facts in those cases, gentlemen?

Mr. Harpold: We have agreed to a stipulation
of facts.

The Court: Then there is no testimony to be
taken?

Mr. Manella: No testimony, your Honor.

We would like to move at this time that the two
cases be consolidated. The stipulation is prepared
in such form. They are identical as to the facts.

The Court: There is no objection to that.

Mr. Harpold: No objection.

The Court: And one brief will take care of both cases.

Mr. Harpold: Yes.

The Court: And one error will take care of two cases on my part.

Mr. Harpold: Yes.

The Court: The easiest way to settle these cases is to flip a coin.

Mr. Harpold: There is considerable controversy in this case and probably we will not be able to settle some of them.

The Court: But it will be submitted on briefs.

Mr. Harpold: Before the stipulation is finally accepted I desire to enter for the purpose of the record, an objection on the ground that they are immaterial and irrelevant to the issues that have to be decided in this case. Those objections will be to paragraphs Nos. 4, 16, 17 and 18 and that portion of paragraph 19 found on page 10 at lines 7 to 9 of the stipulation and also to the entire paragraphs numbered 20, 21, 22, 23, 24, 25, 26 and 27 of the stipulated facts.

The Court: It will be taken under submission, gentlemen. I have so many submitted matters now that it is going to take quite a while before I can reach it, so you gentlemen might as well have the advantage of that time in presenting your briefs.

Mr. Harpold: I would appreciate some little time. The office is a little bit disorganized by the loss of a man and if the court will give us time we will be grateful for it.

The Court: How about 30, 30 and 30?

Mr. Harpold: That is agreeable.

Mr. Manella: Yes, your Honor.

(Whereupon the above-entitled matter was concluded.)

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 19th day of January A.D., 1951.

Official Reporter.

[Endorsed]: Filed January 19, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 154, inclusive, contain the orig-

inal Complaint for Refund of Federal Income and Victory Taxes; Answer; Stipulation of Facts; Stipulation for Correction of Stipulation of Facts; Memorandum Opinion; Objections to Defendant's Proposed Findings of Fact and Conclusions of Law; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Cash Deposit on Appeal; Designation of Record on Appeal and Statement of Points on Appeal and Counter-designation of Record on Appeal and a full, true and correct copy of Minute Order Entered November 14, 1949 which, together with Reporter's Transcript of Proceedings on November 14, 1949, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 25th day of January, A.D. 1951.

[Seal] /s/ EDMUND L. SMITH,
Clerk.

By /s/ THEO HOCKE,
Chief Deputy.

[Endorsed]: No. 12826. United States Court of Appeals for the Ninth Circuit. Lawrence Barker, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California Central Division.

Filed January 27, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals
for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit
Civil No. 12826

LAWRENCE BARKER,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT OF POINTS TO
BE RELIED ON ON APPEAL

Appellant Lawrence Barker, through his attorneys Irell & Manella, Lawrence E. Irell and Arthur Manella, hereby states that in this appeal from the Final Judgment of the District Court entered on October 24, 1950, he intends to rely upon the following points:

1. The District Court erred in failing and omitting to find as facts all of the facts stipulated by and between the parties and agreed to by and between said parties to be material and relevant, as set forth in paragraphs V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of the Stipulation of Facts filed by the parties with the Court.

2. The District Court erred in failing and omitting to find as facts all of the facts stipulated by and between the parties as set forth in paragraphs IV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXVI and XXVII of the Stipulation of Facts filed by the parties with the Court.

3. The District Court erred in failing and omitting to find from stipulated evidence establishing the same that the exchange in 1923 by the holders of all the common stock of Barker Bros., Inc., of California, including Lawrence Barker and a group of stockholders associated with him, was done pursuant to the terms of a prior plan and agreement for the reorganization of Barker Bros., Inc., of California, entered into by and between the holders of all of the common stock of Barker Bros., Inc., of California and the banking firm of Marshall Field, Ward, Gore & Co.

4. The District Court erred in failing and omitting to find from the facts establishing the same that the final result to be accomplished, and actually accomplished, by the plan for the reorganization of Barker Bros., Inc., of California, was that Lawrence Barker and the group of owners of the common stock of Barker Bros., Inc., of California, associated with him, would receive in place of their common stock in Barker Bros., Inc., of California all of the stock of a new corporation, Lawrence Barker, Incorporated; that the remaining group of owners of the common stock of Barker Bros., Inc., of California would receive in place of their common stock in Barker Bros., Inc., of California shares of no par common stock in a new corporation, Barker Bros., Inc., of Delaware; that Barker Bros., Inc., of Delaware would receive all the assets and business of Barker Bros., Inc., of California; that Lawrence Barker, Incorporated, would receive \$1,000,000 in cash from the sale to Marshall Field,

Ward, Glore & Co. of \$1,087,000 of first preferred stock of Barker Bros., Inc., of Delaware, another \$1,000,000 of first preferred stock of Barker Bros., Inc., of Delaware subject to an option in favor of Marshall Field, Ward, Glore & Co. to purchase said shares at \$92.00 per share, and \$2,300,000 of second preferred stock of Barker Bros., Inc., of Delaware.

5. The District Court erred in finding and concluding as a matter of law that the transactions whereby appellant Lawrence Barker exchanged the shares of common stock in Barker Bros., Inc., of California which he originally owned, for stock in Barker Bros., Inc., of Delaware, and then exchanged the said latter stock for common stock in Lawrence Barker, Incorporated, did not give rise to a gain or loss that should be recognized for federal income tax purposes within the meaning of Sections 112(b) (5) and 113 (a) (6) of the Revenue Act of 1934.

6. The District Court erred in failing to find and conclude as a matter of law that the transactions in 1923, whereby appellant Lawrence Barker exchanged the shares of common stock in Barker Bros., Inc., of California which he originally owned, for stock in Barker Bros., Inc., of Delaware, and then exchanged the latter stock for common stock of Lawrence Barker, Incorporated, was a taxable exchange upon which gain or loss was recognized for federal income tax purposes within the meaning of Sections 112(a) and 113(a) of the Revenue Act of 1932.

7. The District Court erred in failing to find and conclude as a matter of law that the transactions in 1923, whereby, pursuant to the plan for the reorganization of Barker Bros., Inc., of California, that corporation transferred all of its assets and business to Barker Bros., Inc., of Delaware, and whereby Lawrence Barker transferred his common stock in Barker Bros., Inc., of California and ultimately received in place thereof stock in Lawrence Barker, Incorporated, destroyed the continuity of interest of Lawrence Barker in the transferred property.

8. The District Court erred in finding and concluding that after the exchange by the holders of the common stock of Barker Bros., Inc., of California, for the shares of stock of Barker Bros., Inc., of Delaware, said transferors were in control of Barker Bros., Inc., of Delaware, with the same proportionate stock interest that they had previously had in Barker Bros., Inc., of California.

9. The District Court erred in omitting and failing to find and conclude as a matter of law that after the exchange by the holders of the common stock of Barker Bros., Inc., of California for the shares of stock of Barker Bros., Inc., of Delaware, said transferors were not in control of Barker Bros., Inc., of Delaware, since said transferors did not own at least 80% of the total number of shares of all other classes of stock of Barker Bros., Inc., of Delaware.

10. The District Court erred in finding and concluding as a matter of law that the thirty shares of

the common stock of Lawrence Barker, Incorporated, which appellant Lawrence Barker sold on December 30, 1943, had a cost or other basis for determining gain or loss on their sale or disposition of \$52.18 per share, and that Lawrence Barker realized a capital gain of \$3,434.60 when he sold said thirty shares for \$5,000 on December 30, 1943.

11. The District Court erred in failing to find and conclude as a matter of law that the thirty shares of common stock of Lawrence Barker, Incorporated, which appellant Lawrence Barker sold on December 30, 1943, had a cost or other basis for determining gain or loss upon their sale or disposition of \$219.35 per share, and that appellant Lawrence Barker realized a capital loss of \$1,580.50 when he sold said thirty shares for \$5,000 on December 30, 1943.

12. The District Court erred in finding and concluding that the appellant Lawrence Barker overpaid his federal income tax for the taxable year 1943 only in the sum of \$434.61, and is entitled have only said amount refunded to him, together with interest thereon as provided by law, from the 15th day of March, 1944.

13. The District Court erred in failing to find and conclude as a matter of law that appellant Lawrence Barker overpaid his federal income tax for the taxable year 1943 in the sum of \$1,818.98, and is entitled to have said amount refunded, together with interest thereon as provided by law, from the 15th day of March, 1944.

[Endorsed]: Filed February 2, 1951.

